2000

James and Carol Busche v. Salt Lake County, an incorporated Utah county, Wallnet Investment, L.C., a Utah limited liability company, RBCSU Realty, L.L.C., a Utah limited liability corporation, Regence Bluecross Blueshield of Utah, a Utah corporation, Mill Pointe Associates, L.L.C., a Utah limited liability corporation, 2825 E Cottonwood Parkway, L.C., a Utah limited liability corporation, 2755 E Cottonwood Parkway, L.C., a Utah limited liability corporation, 2855 E Cottonwood Parkway, L.C., a Utah limited liability corporation: Brief of Appellee

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David W. Overholt; Mark E. Medcalf; Richer, Swan & Overholt; David E. Yocom; Salt Lake District Attorney; Jeffery H. Thorpe; Deputy District Attorney; Charles P. Swanson; Carl F. Huefner; Suitter Axland; Bruce T. Jones; Ballard, Spahr, Andrews & Ingersoll, L.L.P.; Attorneys for Appellees.

(2)

IN THE UTAH COURT OF APPEALS

JAMES and CAROL BUSCHE, Plaintiffs/Appellants, v. SALT LAKE COUNTY, an incorporated Utah county, WALLNET INVESTMENT, L.C., a Utah limited liability company, RBCSU REALTY, L.L.C., a Utah limited liability corporation, REGENCE BLUECROSS BLUESHIELD OF UTAH, a Utah corporation, MILL POINTE ASSOCIATES, L.L.C., a Utah limited liability corporation, 2825 E COTTONWOOD PARKWAY, L.C., a Utah limited liability corporation, 2755 E COTTONWOOD PARKWAY, L.C., a Utah limited liability corporation, 2855 E COTTONWOOD PARKWAY, L.C., a Utah limited liability corporation, Defendants/Appellees.	Case No. 20000073-CA Priority No. 13

BRIEF OF APPELLEES

2825 E Cottonwood Parkway, L.C., 2755 E Cottonwood Parkway, L.C. and 2855 E Cottonwood Parkway, L.C.

APPEAL FROM AN ORDER GRANTING DEFENDANTS' MOTION TO DISMISS OF THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH

The Honorable Frank G. Noel, presiding

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August 10, 2000

VIA HAND-DELIVERY

Ms. Paulette Stagg
Clerk of the Court
UTAH COURT OF APPEALS
450 South State
P.O. Box 140210
Salt Lake City, Utah 84114-0210

Re: Busche v. Salt Lake County, et al.
Case No. 20000073-CA
Substitute Page for Brief of Appellees

Dear Ms. Stagg:

After filing the Brief of appellees 2825 E Cottonwood Parkway, L.C., 2755 E Cottonwood Parkway, L.C. and 2855 E Cottonwood Parkway, L.C. yesterday afternoon, we discovered an inadvertent error misidentifying the moving party in part of the Statement of Facts

In order to mitigate the potential for confusion, please find enclosed an original and seven copies of a substitute page 10-11, in which the word "Appellees" has been substituted in the place of the words "The Busches" at the beginning of paragraph 18 on page 10.

We would appreciate your slipping the substitute page in the briefs as filed. Thank you for your cooperation and we apologize for any confusion.

Very truly yours,

SUITTER AXLAND

Carl F. Huefner

CFH:aw
Enclosures
cc: Bruce R. Baird, Esq.
David W. Overholt, Esq., and Mark E. Medcalf, Esq.
David E. Yocom, Esq., and Jeffrey H. Thorpe, Esq.
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IN THE UTAH COURT OF APPEALS

JAMES and CAROL BUSCHE, Plaintiffs/Appellants, v. SALT LAKE COUNTY, an incorporated Utah county, WALLNET INVESTMENT, L.C., a Utah limited liability company, RBCSU REALTY, L.L.C., a Utah limited liability corporation, REGENCE BLUECROSS BLUESHIELD OF UTAH, a Utah corporation, MILL POINTE ASSOCIATES, L.L.C., a Utah limited liability corporation, 2825 E COTTONWOOD PARKWAY, L.C., a Utah limited liability corporation, 2755 E COTTONWOOD PARKWAY, L.C., a Utah limited liability corporation, 2855 E COTTONWOOD PARKWAY, L.C., a Utah limited liability corporation, Defendants/Appellees.	Case No. 20000073-CA Priority No. 13

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APPEAL FROM AN ORDER GRANTING DEFENDANTS' MOTION TO DISMISS OF THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH

The Honorable Frank G. Noel, presiding

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IN THE UTAH COURT OF APPEALS

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BRIEF OF APPELLEES
2825 E Cottonwood Parkway, L.C., 2755 E Cottonwood Parkway, L.C. and 2855 E Cottonwood Parkway, L.C.

JURISDICTIONAL STATEMENT AND NATURE OF PROCEEDINGS

1. The Utah Court of Appeals has jurisdiction to hear this appeal under Utah Code Ann., § 78-2A-3(2)(j) (1953, as amended).

2. This is an appeal from an Order of the Third Judicial District Court, the Honorable Frank G. Noel presiding, granting the defendants' motions to dismiss for failure

to state a claim under Rule 12(b)(6), Utah Rules of Civil Procedure. (See Addendum at Exhibits "A-1" and "A-2", being a copy of the District Court's Minute Entry dated November 16, 1999 [R. 90-93] and a copy of the District Court's Order Granting Defendants' Motion to Dismiss dated December 20, 1999 [R. 94-96], respectively.)

STATEMENT OF ISSUES PRESENTED ON APPEAL

1. Did the Third Judicial District Court properly dismiss the Appellants' Complaint for failure to state a claim upon which relief can be granted on the grounds that, taking the factual allegations of the Complaint to be true, the modification of the conditional use permit in question was approved in full compliance with Utah's County Land Use Development and Management Act and the Uniform Zoning Ordinances of Salt Lake County as a matter of law? The matter having been disposed of on a Motion to Dismiss by the District Court, the decision is subject to review in this Court for correctness as a matter of law. Sperry v. Sperry, 1999 UT 101, 990 P.2d 381; Barber v. Farmers Ins. Exch., 751 P.2d 248 (Utah App. 1988).

2. Are the Appellants' claims under the Complaint legally barred on the grounds of untimeliness, failure to exhaust administrative remedies, and lack of standing so as to provide a separate and appropriate basis to affirm the District Court's dismissal of the Complaint, notwithstanding the fact that the District Court did not expressly adopt such alternative holdings? A decision of a lower court should be upheld if it can be upheld on any appropriate grounds. In re Estate of Shepley, 645 P.2d 605 (Utah 1985).

DETERMINATIVE STATUTES, RULES, AND ORDINANCE PROVISIONS

The following statutes, rules and ordinances are determinative of the issues in this appeal:

1. County Land Use Development and Management Act, Utah Code Ann. § 17-27-101 et seq. (1953, as amended) [hereinafter cited as the "Act"]. (See Addendum at Exhibit "B".)

2. Rule 12(b)(6), Utah Rules of Civil Procedure, which provides as follows:

> Every defense, in law or fact, to claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted . . . .

3. Title 19, Uniform Zoning Ordinances of Salt Lake County [hereinafter cited as "UZOSLC"]. (See Addendum at Exhibit "C.")

STATEMENT OF THE CASE

A. NATURE OF THE CASE

The Appellees herein own property in the Cottonwood Corporate Center, which is located at approximately 6800 South between 2700 and 3000 East in Salt Lake County, State of Utah (R. 1-2, ¶¶ 1-9). The area in which Cottonwood Corporate Center is zoned O-R-D, which permits construction of office buildings with a maximum of six stories (R. 6, ¶ 44; and Appellants' Brief at p.15). A conditional use permit for development of the Cottonwood Corporate Center, based on a site plan that contemplated two- and six-story

buildings and referred to by Appellants as the "Original Master Plan," was approved by the County sometime prior to April 20, 1996 (R. 2-3 at ¶¶ 11-13). On or about April 20, 1996, a revised site plan (captioned "Amended Phasing Plan") was approved by Salt Lake County's Division of Development Services, which authorized construction in conformity with the zoning regulations, but altering the configuration and location of the buildings, roads and other improvements to be constructed therein from those set forth in the Original Master Plan. (R. 2-5 at ¶¶ 11-16, 25-28 & 31-32.)

Appellants are James and Carole Busche (hereinafter referred to as the "Busches"). The Busches did not own property adjoining the Cottonwood Corporate Center in April of 1996, but in late 1996 became interested in purchasing a home immediately west of the Center which they later purchased at an unspecified date (R. 1 at ¶ 1; R. 2 at ¶ 10; and R. 6 at ¶ 41). Prior to purchasing their home, the Busches made inquiries with Salt Lake County in an effort to review site plans for the Cottonwood Corporate Center, but allege that they reviewed only the Original Master Plan and were not aware of the Amended Phasing Plan approved on April 20, 1996 (R. 2-3 at ¶¶ 10-11 & 15). The Busches allege that if they had known of the Amended Phasing Plan, they would not have acquired the residence they now own to the west of the Cottonwood Corporate Center (R. 6 at ¶ 41).[1]

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[1] Significantly, the Busches did not allege that their failure to become aware of the April 20, 1996 Amended Phasing Plan was in any manner attributable to any actions on the part of the owners of the Center, referring only to the lack of a systematic filing system for approved plans in the office of the County's Division of Development Services. (R. 3-4 at ¶¶ 19-23.)

The Busches allege that they learned about the Amended Phasing Plan sometime in 1999 (a "few weeks" before filing their Complaint on July 30, 1999), more than three years after the approval of the site plan in April, 1996 (R. 3 at ¶ 14). In the intervening three years, buildings and other improvements had been constructed or were in the course of construction consistent with the conditional use permit and Amended Phasing Plan (R. 4-5 at ¶¶ 25-31). By their Complaint, alleging improper approval of the Amended Phasing Plan, the Busches sought declaratory and injunctive relief requiring reconsideration of the approval of the Amended Phasing Plan, removal of the buildings already in place and enjoining further development (R. 9-10 at ¶¶ 64-67).

B. PROCEEDINGS LEADING TO THIS APPEAL

Sometime in July, 1999, the Busches attempted to challenge the approval of and work done under the conditional use permit embodied in the approval of the April 20, 1996 Amended Phasing Plan to the Salt Lake County Board of Adjustment (R. 7-8 at ¶¶ 53-57.) That challenge was rejected as an untimely appeal, having been brought more than sixty (60) days after the action appealed from (R. 8 at ¶ 58.)

On July 30, 1999, the Busches filed their Complaint in the Third Judicial District Court seeking reconsideration of the April 20, 1996 approval of the Amended Phasing Plan and the injunctive relief identified above (R. 1).

The Appellees filed motions to dismiss under Rule 12(b)(6), Utah Rules of Civil Procedure, for failure to state a claim upon which relief could be granted on August 27,

1999, August 30, 1999, and September 20, 1999 (R. 41, 38 & 68). The motions were fully briefed by all parties and submitted to Judge Noel for decision (R. 85).

C. DISPOSITION IN THE DISTRICT COURT

Judge Noel of the Third Judicial District Court entered a Minute Entry granting the Appellees Motions to Dismiss (Addendum at Exhibit "A-1"). That Minute Entry expressly states that the dismissal of the Complaint on the grounds that the conditional use permit, including the approval of the Amended Phasing Plan, was issued in full compliance with Utah statute and the UZOSLC (R. 90-91). Judge Noel's Minute Entry was reduced to an Order Granting Defendants' Motion To Dismiss on December 20, 1999 (R. 94). This appeal followed.

SUMMARY OF ARGUMENTS

By their Complaint, the Busches seek a review of the approval of an amendment to a site plan, under an existing, approved conditional use permit. That amendment was approved on April 20, 1996, before the Busches had acquired any interest in adjacent property. Moreover, the Appellees had pursued planning and construction of improvements to the property on the basis of the Amended Phasing Plan for at least three years before the Busches sought any type of administrative or judicial review.

The basis for the Busches' claim for relief is an allegation that the approval of the April 20, 1996 Amended Phasing Plan was improperly made without notice and a public hearing and that the Amended Phasing Plan itself bore only the initials of the Senior Planner

in the Division of Development Services rather than those of the Director of the Development Services himself. The District Court correctly held that the Busches' position misstates the requirements of the Act and the UZOSLC and that the modification of the conditional use permit granted with respect to the Cottonwood Corporate Center by approval of the April 20, 1996 Amended Phasing Plan was done in complete accordance with both the Act and the UZOSLC. The District Court ruled as a matter of law that issuance of a conditional use permit and modifications thereto do not require a public hearing. That decision of the District Court should be upheld.

In the alternative, this Court may uphold the decision of the District Court on the ground, raised by the Appellees as the moving parties below, that the Busches' effort to seek judicial review of the Amended Phasing Order is inappropriate becauase any such claims are legally barred. In particular, the Busches failed to timely appeal the decision complained of, failed to exhaust administrative remedies, and lack standing because they were not adjoining landowners at the time the decision was made and all limitation periods for appeal had expired. Even though the Judge Noel did not base his decision on these grounds, each is an independent, sufficient and appropriate ground from upholding the disposition of this case in the District Court. Any injury suffered by the Busches resulted not from the decision of the Division of Development Services to approve the Amended Phasing Plan but because the Busches purchased their new residence without a complete understanding of the nature

of the development that had already been approved within the adjacent Cottonwood Corporate Center.

STATEMENT OF RELEVANT FACTS [2]

1. Busches are the owners of residential property at 2680 Sychelles Court in Salt Lake County, which is immediately west of and adjoins the Cottonwood Corporate Center (R. 1 at ¶1; and R. 2 at ¶ 10).

2. Appellees 2825 E Cottonwood Parkway, L.C., 2755 E Cottonwood Parkway, L.C., and 2855 E Cottonwood Parkway, L.C., are owners, along with the other defendants below other than Salt Lake County, of commercial property in the Cottonwood Corporate Center (R. 2 at ¶¶ 3-9).

3. The Cottonwood Corporate Center is zoned O-R-D under UZOSLC (R. 6 at ¶ 44; Appellants' Brief at p. 12), which allows construction of office buildings of up to six stories under a conditional use permit.

4. A conditional use permit for the Cottonwood Corporation Center, which was based upon an original "Master Plan," was in existence and approved sometime prior to April 20, 1996 (R. 2-3 at ¶¶ 11-15).

6. An Amended Phasing Plan for the Cottonwood Corporate Center was in existence and approved on or about April 20, 1996 (R. 3 at ¶ 15).

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[2] This appeal being taken from the grant of Motions to Dismiss under Rule 12(b)(6), Utah Rules of Civil Procedure, the relevant facts stated herein are assumed to be true as set forth in the allegations of the Complaint solely for purposes of consideration of such motions and this appeal.

7. The Amended Phasing Plan carries the initials of Warren Reynolds (R. 3 at ¶ 15), senior planner in the Salt Lake County Division of Development Services.

8. The Amended Phasing Plan reflects a change in traffic flow patterns, relocation of certain six-story buildings and the addition of a two-story parking garage (R. 4-5 at ¶¶ 25-32).

9. The Busches became interested in acquiring the residence on Sychelles Circle adjacent to the Cottonwood Corporate Center only late 1996 (R. 2 at ¶ 10).

10. Prior to purchasing the Sychelles Circle property, the Busches reviewed the original Master Plan rather than the Amended Phasing Plan (R. 2 at ¶¶ 10-11; and R. 3 at ¶ 15).

11. The Busches were not adjoining landowners at the time they decided to purchase the Sychelles Circle property and claim that, had they been aware of and reviewed the Amended Phasing Plan, they would not have purchased that property (R. 6 at ¶ 41).

12. The Busches discovered the existence of the Amended Phasing Plan, and the substantial reconfiguration from the original Master Plan, "a few weeks" before filing their Complaint on July 30, 1999, more than three years after its approval on April 20, 1996 (R. 3-5 at ¶¶ 14 and 25-32).

13. The Busches believe that construction pursuant to the Amended Phasing Plan has negatively affected their property value more than development under the original Master Plan would have (R. 5 at ¶ 35).

14. The Busches' Complaint asserts that approval of the conditional use as described on the Amended Phasing Plan (and specifically the relocation of the six-story office buildings closer to the western boundary of the Cottonwood Corporate Center) without notice and a public hearing was defective and contrary to law (R. 6 at ¶¶ 41 & 42).

15. After discovering the existence of the Amended Phasing Plan but sometime prior to July 29, 1999, the Busches attempt to appeal the April 20, 1996 conditional use decision approving the Amended Phasing Plan to the Salt Lake County Board of Adjustment (R. 7-8 at ¶¶ 53-57).

16. The attempted appeal to the Board of Adjustment was rejected as untimely because it was filed more than 60 days after April 20, 1996 (R. 8 at ¶ 58).

17. The Busches then filed their Complaint in this case seeking a court order that the office buildings be removed and further construction be enjoined (R. 9-10 at ¶¶ 63-67).

18. Appellees filed a Motion to Dismiss (R. 38), which was joined by other defendants (R. 41 and 68), under Rule 12(b)(6), Utah Rules of Civil Procedure, which Motion was granted by Judge Frank G. Noel pursuant to a Minute Order dated November 16, 1999 (R. 90), which was in turn reduced to an Order dismissing the Complaint entered on December 20, 1999 (R. 94).

INTRODUCTION

This appeal involves the question of how and when a conditional use decision of officials charged with the administration of a county's zoning ordinances becomes binding

on owners of land adjacent to the property with respect to which the decision was made. In particular, this Court is asked to determine whether the District Court below properly concluded that the allegations of the Busches' Complaint failed to demonstrate any defect in the manner in which the Salt Lake County Division of Development Services acted in approving the modification of the conditional use permit for the Cottonwood Corporate Center. The Busches' Complaint seeks declaratory and injunctive relief, including removal of improvements constructed in reliance on the conditional use permit. In addition, Appellees request that this Court uphold the District Court's dismissal of the Complaint on the ground that the claims asserted are legally barred.

Sometime in late 1996, the Busches became interested in acquiring a residence located west of, and adjacent to, the Cottonwood Corporate Center, which they were aware was being developed as a commercial office complex. The Cottonwood Corporate Center property was zoned O-R-D under Salt Lake County's zoning ordinance, which permits buildings of up to six stories by conditional use permit. Concerned about the impact of the development on the property they proposed to purchase, the Busches attempted to review site plans for the Center. They obtained a copy of a site plan (apparently directly or indirectly from Salt Lake County) which they erroneously believed to reflect the then current proposal for the development of the property, and which included both two- and six-story buildings. However, they apparently were unaware of the Amended Phasing Plan, a

modification to the Original Master Plan, which changed the configuration of the buildings and other improvements to be developed, which had been approved on April 20, 1996.

Sometime in 1999, the Busches became aware that the development did not conform to their expectations and, in their view, adversely affected their use and enjoyment of the residence they had purchased. After additional inquiries, the Busches discovered the Amended Phasing Plan dated April 20, 1996. The Busches have not alleged that the actual development differs from the Amended Phasing Plan or that it includes any uses that are not permitted within an O-R-D zone under a conditional use permit. After an unsuccessful attempt to seek redress through County officials, which was ultimately denied as being untimely, the Busches filed the Complaint that commenced the instant case, asking for a judicial order requiring removal of the office buildings constructed in accordance with the Amended Phasing Plan and an injunction against further construction.

The argument advanced by the Busches in support of their claim for relief involves a claim that the conditional use permit (or its modification by the approval of the Amended Phasing Plan) was approved without notice and a public hearing. Alternatively, the Busches have argued that the Amended Phasing Plan was an improper approval of a conditional use because the Development Services Division's senior planner initialed the Amended Phasing Plan for approval rather than the Division Director. Both these arguments are based on erroneous reading of the Act and UZOSLC.

Appellees filed a motion to dismiss the Busches' Complaint for failure to state a claim upon which relief can be granted. The motion, which was joined by the other defendants, was fully briefed by the parties and submitted for decision by Judge Noel of the District Court, who ruled on the motion by a Minute Entry dated November 16, 1999, which was reduced to an Order dismissing the Complaint for failure to state a cause of action, which was entered on December 20, 1999. This appeal followed.

Appellees respectfully submit that the decision of the District Court should be affirmed for the reasons stated in Judge Noel's Minute Entry as well as upon other appropriate and proper grounds not expressly incorporated in Judge Noel's decision.

ARGUMENT

POINT I

THE DISTRICT COURT PROPERLY DISMISSED THE BUSCHES' COMPLAINT UNDER RULE 12(B)(6) BECAUSE THE ALLEGATIONS, EVEN IF TRUE, FAIL TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED

Rule 12(b)(6), Utah Rules of Civil Procedure, provides that a defendant may move to dismiss a claim on the grounds of "failure to state a claim upon which relief can be granted." In consideration of a motion to dismiss, all of the allegations are assumed to be true. In acting upon the Appellees motions to dismiss, the District Court properly determined that the allegations Busches' allegations of the Complaint failed to show any violation of the County Land Use Development and Management Act, Utah Code Ann.

§ 17-27-101 et seq., or the Uniform Zoning Ordinances of Salt Lake County. The Appellees also asserted that the Busches' attempt to seek judicial review of the decision of the Division of Development Services to issue the conditional use permit or its modification by the Amended Phasing Plan was legally barred. The Appellees respectfully submit that the decision of the District Court should be upheld on the same standard of review in that the allegations of the Complaint, even if assumed to be true, fail to show any defect in the issuance of the conditional use permit or the approval of the Amended Phasing Plan for development of the Cottonwood Corporate Center with the configuration belatedly objected to by the Busches. The claim for relief sought by the Busches relies on an incorrect analysis of the applicable requirements of the Act and the UZOSLC with respect to the issuance of a conditional use permit and a modification thereof. In addition, the Busches' attempt to seek judicial review of the April 20, 1996 decision is untimely and legally barred.

The Busches appear to assert, as grounds for reversing the decision of the District Court that it is sufficient to show that a remedy may exist for the injury alleged to have occurred (Appellants' Brief at pp. 8-10). However, this misapprehends the nature of the inquiry with respect to a motion to dismiss for failure to state a claim. The inquiry is not whether a remedy for an alleged wrong can be devised, but rather whether, taking all of the factual allegations to be true for purposes of considering the motion, the complaint states a legally cognizable claim for which such relief may be appropriate. As articulated in a prior decision of this Court, dismissal under Rule 12(b)(6) is appropriate "if it is clear that a party

is not entitled to relief under any state of facts which could be proved in support of its claim." Mackey v. Cannon, 2000 UT App. 36, ¶9, 996 P.2d 1081, 1084 (citing Coleman v. Utah State Land Bd., 795 P.2d 622, 624 (Utah 1990) (emphasis added). This entails a review of the state of the applicable law on which the claim is based—not merely the acceptance of the claimant's assertion as to what the law is, as well as the threshold inquiry as to the justiciable nature of the claim including jurisdiction of the court, timeliness of the action, standing of the claimant, exhaustion of administrative remedies if applicable, etc. To withstand the Appellees' Motions to Dismiss, the viability of the Busches' claims turns on whether the allegations of their Complaint sufficiently demonstrated both (a) that, contrary to the finding of the District Court, the approval of the modification of the conditional use permit embodied in the approval of the Amended Phasing Plan on or about April 20, 1996 was not done in accordance with the requirements of the Act and the UZOSLC, and (b) that they properly sought judicial review of that grant of the conditional use permit (1) in a timely way, (2) after having exhausted administrative remedies, and (3) with that they properly had standing as aggrieved parties. Appellees' respectfully submit that the District Court properly determined that the Busches failed to allege facts to demonstrate any illegality in the approval of the Amended Phasing Order on or about April 20, 1996, and its decision should be upheld. Moreover, Appellees further submit that the District Court's decision may also be upheld on the grounds that the Busches failed to lodge an appeal in a timely way, that the Busches failed to exhaust administrative remedies as expressly required by the Act, and that

the Busches lack standing to contest the modification of the conditional use permit because they are not aggrieved parties within the meaning of the Act and the UZOSLC.

POINT II

THE DISTRICT COURT CORRECTLY DETERMINED THAT THE MODIFICATION OF THE CONDITIONAL USE PERMIT WAS PROPERLY APPROVED

The Busches allege that the Amended Phasing Plan was improperly approved because no notice was given to adjoining landowners[3] and no public hearing was held. However, neither the Act nor the UZOSLC requires notice or a public hearing with regard to the approval of conditional use permits. Furthermore, the District Court correctly held that the Amended Phasing Plan was properly approved under the Act and the UZOSLC, notwithstanding the fact that the Amended Phasing Plan was initialed only by the Senior Planner and not by the Director of Development Services.

A. Neither Applicable Utah Statute Nor the County's Zoning Ordinances Requires Notice or a Public Hearing for Adjacent Landowners Prior to Granting a Conditional Use Permit

The County Land Use Development and Management Act (the "Act"), Utah Code Ann., § 17-27-101 et seq. (1953, as amended), authorizes the creation of county planning commissions. Under the Act, county planning commissions are authorized to "adopt

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[3] Since the Busches were not, by their own allegations, owners of adjacent property at the time that the application for the conditional use permit and the April, 1996 modification thereof were under consideration, such notice would have availed the Busches nothing even if it were required. Having no notice, it is problematic how the Busches would have participated in the public hearing they assert to be a requirement of Utah law.

policies and procedures for the conduct of its meetings, the processing of applications, and other purposes considered necessary for the functioning of the planning commission." Utah Code Ann. § 17-27-202(2)(a) (1953, as amended).

Furthermore, the Act specifically authorizes the county planning commission to "hear or decide any matters that the county legislative body designates, including the approval or denial of . . . conditional use permits" and to "exercise any powers that are necessary to enable it to perform its functions." Utah Code Ann., § 17-27-204(1)(g) and (i) (1953, as amended). The Act also specifically authorizes county zoning ordinances that provide for conditional use permits to be granted "based upon compliance with standards and criteria set forth in the zoning ordinances for those uses." Utah Code Ann., § 17-27-406 (1953, as amended).

Pursuant to the broad grant of authority under the Act, Salt Lake County enacted the UZOSLC. The UZOSLC, Chapter 19.84, deals with conditional uses. That chapter expressly provides that no public hearing need be held with respect to grants and denials of conditional use permits unless the county planning commission deems such a hearing to be necessary in the public interest. See UZOSLC, § 19.84.040.[4] The Busches did not allege

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[4] Conferring discretion upon the planning commission to determine whether a hearing should be held is consistent with the overall structure and purposes of the Act. The Act requires a public hearing prior to enactment of a proposed general zoning plan. See Utah Code Ann., § 17-27-303(1)(a) and (b) (1953, as amended). Similarly, notice and a hearing is required before (a) adoption of a zoning ordinance, (b) removal of a billboard from an owner's property, (c) adoption of a subdivision plan, and (d) adoption of a plat change. See Utah Code Ann., § 17-27-402(2)(a) and (b); -407(4); -802(b) and (c); and -809(1) (1953, as amended). No such requirement is mentioned with respect to grants, denial or modifications of conditional use permits. See Utah Code Ann.,

that the planning commission determined that a hearing was necessary, nor did they allege facts sufficient to show that the planning commission should have determined that a public hearing was necessary in the public interest. Accordingly, Utah law did not require notice or a public hearing be given in connection with the issuance of the conditional use permit for the Cottonwood Corporate Center. Given that notice and a hearing is not required for the original grant of a conditional use permit, certainly no hearing is required to modify a properly authorized conditional use permit under the Act or the UZOSLC.

B. The Act and UZOSLC Authorizes the Division of Development Services to Approve Conditional Use Permits

The Act provides that the county planning commission is to "hear or decide any matters that the county legislative body designates, including the approval or denial of, or recommendations to approve or deny, conditional use permits."Utah Code Ann., § 17-27-204(1)(g) (1953, as amended). The planning commission also has power to "exercise any other powers delegated to it by the county legislative body," as well as to "exercise any other powers that are necessary to enable it to perform its functions." Utah Code Ann., § 17-27-204(1)(h) and (i) (1953, as amended).

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§ 17-27-406.

Lack of notice and a public hearing is also consistent with the nature of conditional uses. The zoning ordinance itself expressly authorizes conditional uses, provided the specified conditions are satisfied. As such, grant of a conditional use permit is not in the nature of an amendment to a zoning ordinance itself. A conditional use permit merely authorizes a landowner to use property in a manner that the zoning ordinance, already approved after public hearing and comment, expressly anticipates and permits. See 12 Powell on Real Property § 79C.16[2][a].

Consistent with the Act, UZOSLC authorizes the planning commission to grant, deny or modify condition use permits. UZOSLC, § 19.84.050. However, the zoning ordinance itself authorizes the planning commission to "delegate to the development services division director the authority to approve, modify or deny all or part of the conditional uses set forth in this title." UZOSLC, § 19.84.060.

The Busches assert that because the Amended Phasing Plan was initialed by Mr. Warren Reynolds, a Senior Planner for the Division of Development Services, it was illegally approved under the Act and UZOSLC. This assertion is legally erroneous, in that it confuses the approval of the site plan with the grant of the conditional use permit. Under UZOSLC, a conditional use permit is "in the form of a letter to the applicant which together with the approved site plan, if required, shall constitute the conditional use permit." UZOSLC, § 19.84.095(B) (emphasis added).

The Busches did not allege that the Director of the Development Services Division did not approve the original conditional use permit, which they specifically admit in their allegations had been approved. Nor is there any allegation that the Amended Phasing Plan was not approved by the Director either in the ordinary course of business or in a letter accompanying the Amended Phasing Plan. The allegations erroneously rely solely on the fact the Senior Plan initialed the Amended Phasing Plan.[5]

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[5] Even assuming, without conceding, that Mr. Reynold's initials constituted the approval of the modification of the conditional use permit, the authority of the Director of the Development Services Division includes, under principles of agency, the authority of his Senior Planner, acting at the direction of the Director. Such delegation is essential to proper operation of

As such, the District Court properly determined that this allegation was not sufficient to state a claim that there had been a violation of the Act or UZOSLC in the grant or modification of the conditional use permit for the Cottonwood Corporate Center and should be upheld.

POINT III

THE DECISION OF THE DISTRICT COURT CAN BE SUSTAINED ON THE GROUND THAT THE BUSCHES ARE PRECLUDED FROM SEEKING JUDICIAL REVIEW OF THE MODIFICATION OF THE CONDITIONAL USE PERMIT

Judge Noel's Minute Entry bases his decision to dismiss the Busches' Complaint on his finding that the modification of the conditional use permit was done in conformity with the Act and UZOSLC. Nevertheless, the Utah Supreme Court has noted that a decision of a lower court may be affirmed on any proper ground, even if the lower court expressly based its reasoning on incorrect reasoning. See Jesperson v. Jesperson, 610 P.2d 326, 328 (Utah 1980); see also In re Estate of Shepley, 645 P.2d 605 (Utah 1985).

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the Division, particularly when such action relates to modification of a previously approved conditional use permit. As stated by Judge Noel in his Minute Entry:

> "Plaintiffs claim is that the procedure in this case was flawed and that the Director is not able to delegate the authority to modify conditional use permits to his own senior planner within his office. The Court is of the opinion that plaintiff has failed to provide any persuasive authority for its position. Both the statutory and applicable county ordinance provisions appear to authorize the procedures in this case."

(R. 91).

In the District Court below, Judge Noel assigned one proper reason for its ruling. However, the decision of the District Court could also be sustained on the grounds that the Busches' attempt to seek judicial review is legally precluded for at least three separate reasons.

A. The Busches' Claims, Even If Cognizable Under the Act, Are Barred Because of Untimeliness

The Act establishes a limitations period within which an action seeking review of a local decision made under the Act must be commenced in the District Court:

> Any person adversely affected by any decision made in the exercise of the provisions of this chapter may file a petition for review of the decision with the district court within 30 days after the local decision is rendered.

Utah Code Ann., § 17-27-1001(2)(a) (1953, as amended) (emphasis added).

The Busches' own allegations admit that the original conditional use permit was issued sometime before April 20, 1996 and that it was modified, through the approval of the Amended Phasing Plan, on or about April 20, 1996. As such, the attempt to seek administrative review and subsequent filing of the Complaint in this matter three years later, in 1999, are clearly barred by the 30-day limitations period under the Act.[6]

Recognizing the untimeliness of their Complaint under the terms of Section 1001(2)(a) of the Act, the Busches attempted to characterize this action as an appeal of a

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[6] The issue of when the Busches became aware of the terms of the modified conditional use permit is irrelevant. There is no tolling of this limitation period applicable to the instant case. The only provision tolling the limitations period applies to situations involving requests for arbitration of a constitutional taking issue. Utah Code Ann., § 17-27-1001(2)(b) (1953, as amended).

"decision administering or interpreting a zoning ordinance" (R. 7-8 at ¶ 54), rather than as an appeal of a decision amending a site plan for a conditional use permit.[7] The allegation asserts that the appeal is from "Mr. Reynolds' decision that he had the authority to administratively approve the Amended Phasing Plan" (Id.).

Even assuming this to be the case, UZOSLC provides a specific method and limitations period for an administrative appeal attributable to an "error in any order, requirement, decision or determination made by an official in the administrative department in the administration or interpretation of the zoning ordinance." UZOSLC, § 19.92.050(A)(1).[8] Such appeals must be made to the Board of Adjustment within sixty days after the order, requirement, decision or determination. UZOSLC, § 19.92.050(E). As such, the Board of Adjustment's rejection of the Busches' request for review was properly dismissed as untimely having been made more than three years after the date of the purported April 20, 1996 decision of Mr. Reynolds. It would be illogical to determine that

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[7] There would be another infirmity to an appeal to the Board of Adjustment of alleged error with respect to a conditional use permit. Conditional use decisions are expressly not subject to administrative review by the Board of Adjustment under UZOSLC, § 19.92.050(C), which provides:

> (1) Only zoning decisions applying the ordinance may be appealed to the board of adjustment.
> (2) A person may not appeal, and board of adjustment may not consider, any zoning ordinance amendments or conditional use decisions.

(Emphasis added).

[8] This rule is enacted pursuant to the mandate of the Act under Utah Code Ann., § 17-27-704 (1953, as amended).

a claim barred from administrative review as untimely could be resuscitated for substantive judicial review simply by making an untimely filing of the administrative appeal and then seeking review in the district court based on the decision of the Board of Adjustment correctly holding that review is time barred. Indeed, the only issue for judicial review under such a determination would be whether the Board of Adjustment had properly determined that the request for review was untimely.

Even assuming that the April 20, 1996 decision, whether characterized as a decision modifying the conditional use permit or Mr. Reynolds's purported decision that he had "authority to administratively approve the Amended Phasing Plan" was directly subject to review by the District Court, the filing of an appeal in 1999 was clearly beyond the limitations period established by the Act.

B. Judicial Review is Barred by Failure to Timely Exhaust Administrative Remedies

The Act expressly requires the exhaustion of administrative remedies as a prerequisite to judicial review of any administrative decision under authority of the Act:

> No person may challenge in district court a county's land use decisions made under this chapter or under the regulation made under authority of this chapter [which would include zoning ordinances] until that person has exhausted all administrative remedies.

Utah Code Ann., § 17-27-1001(1) (1953, as amended). See also Hatch v. Utah County Planning Department, 685 P.2d 550 (Utah 1984)(applying exhaustion of remedies

requirement under Utah Code Ann., former § 17-27-16 (1953, as amended), in connection with a building permit decision).

Under UZOSLC, decisions as to conditional use permits by the Director of the Development Services are administratively reviewable first by appeal to the county planning commission, which much be brought within ten days after the Director's decision (UZOSLC, § 19.84.100). Thereafter, the decision on appeal by the planning commission may be further appealed to the board of county commissioners, which appeal must be filed within ten days after the planning commission's decision (UZOSLC, § 19.84.110(A)). As noted at footnote 7 above, there is no provision for appeal to the Board of Adjustment with respect to conditional use decisions.

The Busches' allegations fail to aver that they pursued any of administrative appeals available under the UZOSLC with respect to any conditional use decisions with respect to the Cottonwood Corporate Center. As such, the Busches' claims are barred for failure to exhaust administrative remedies.

As noted above, however, The Busches have asserted that the appeal to the Board of Adjustment was not a request for review of the approval of a conditional use permit, but rather a request for review of Mr. Reynolds's "decision that he had the authority to administratively approve the Amended Phasing Plan." This argument avails The Busches nothing with respect to satisfying the requirement of exhaustion of administrative remedies. As noted above in Point III.A., UZOSLC, § 19.92.050(A), provides a specific 60-day

limitations period within which review of any order, requirement, decision, or determination by any official under the zoning ordinances must be brought before the Board of Adjustment. By their own allegations, the Busches acknowledge that the decision approving the Amended Phasing Plan was made on or about April 20, 1996. As such, a request for review by the Board of Adjustment would have timely only if made before June 20, 1996. The Busches' request for review was not made until sometime in 1999, well beyond the time provided under UZOSLC.

Having failed to exhaust administrative remedies under UZOSLC, the Busches' attempt to obtain a judicial review and remedy in the District Court is barred for failure to exhaust administrative remedies as expressly required by the Act. This would provide a separate and appropriate basis upon which the District Court could have granted the Appellees' Motions to Dismiss for failure to state a claim.

C. The Busches Are Not Aggrieved Parties Entitled to Seek Review of the Modification of the Conditional Use Permit

Under the Act, review in a district court of any decision made under authority of the Act is available only to a "person adversely affected" by such decision. Utah Code Ann., § 17-27-1001(1) (1953, as amended). Similarly, under UZOSLC only a "person or entity adversely affected" by a decision is entitled to seek review of a conditional use decision from the planning commission and the board of county commissioners pursuant to § 19.84.100 and § 19.84.110, respectively. Review of other orders, requirements, decisions

and determinations by the county Board of Adjustment under UZOSLC, § 19.92.050(A) also may be sought only by a "person or entity adversely affected by the decision."

By their own allegations, the Busches were not adjoining property owners at the time the decision complained of was made on or about April 20, 1996. Further, they allege that they did not even become interested in purchasing the residence on Seychelles Circle until late 1996 and purchased the home only after review what they erroneously thought to be the current site plan for the development of the Cottonwood Corporate Center. As such, the Busches were not "adversely affected" by the decision in the sense required to confer standing to object to the decision as contemplated by the statute. The Busches' alleged injury (and the alleged adverse effect on their property) is due not to the April 20, 1996 decision but by the fact that they were unaware of the decision that had already been made at the time they later decided to purchase the residence adjoining the Cottonwood Corporate Center.

Indeed, the Busches' own allegations acknowledge that all of the alleged harm suffered by them would have been avoided had they reviewed the Amended Phasing Plan approved on April 20, 1996 prior to their decision to purchase of the residence, because they would not have purchased that residence. As such, it is clear that the gravamen of the Busches' claim is that they acquired their present home without a full understanding of the nature of development that had been approved by the Salt Lake County Division of Development Serv ices. In essence, they have attempted to convert their disappointment in

the bargain they made for themselves into a claim for a right to require reversal of a previously finalized decision—a decision that third-parties unaware of the Busches' interest in the adjacent property reasonably believed to have been properly made and reasonably relied upon by them proceed with a large commercial development.

To hold that a decision of a county zoning authority may be overturned upon a request for review by one who becomes an adjoining landowner by purchase after a conditional use decision has been made and all relevant appeal periods have run would drastically alter the careful scheme of the Act intended to provide opportunities for reasonable review of administrative decisions while ensuring a degree of certainty to the holder of property within zones specifically authorized to contain specific, if conditional, uses. There is no Utah authority that supports or mandates such a result.

Appellees respectfully submit that the Busches lack standing to seek a review of the decision of the Salt Lake County Division of Development Services. Such lack of standing would constitute another independent, sufficient and appropriate ground for upholding the decision of the District Court below dismissing The Busches' Complaint.

CONCLUSION

The District Court properly determined that the allegations of the Busches' Complaint fail to state a claim upon which relief can be granted because the approval process for the conditional use decision complained of was, without contradiction of any allegations of the Complaint, not defective under the Act or the UZOSLC. No notice to adjoining landowners

or public hearing is required. The Complaint fails to allege that the modification of the site plan for the Cottonwood Corporate Center was defective or that any official exceeded his or her authority under the Act or UZOSLC. As such, the order of the District Court dismissing the Complaint should be upheld.

Alternatively, this Court should uphold the dismissal of the Complaint on other proper grounds, even though District Court may not have expressly adopted such grounds as a basis for its decision. In that regard, the Busches' Complaint could be properly dismissed on the ground that the claims asserted are untimely, that the Busches' failed to exhaust administrative remedies and that the Busches, not being adjoining property owners until after the decision had been made and appeals periods had run, do not have standing to challenge the decision that had affected their new residence at the time they purchased it. As such, the decision of the District Court should be affirmed on any of these alternative grounds.

DATED this 9th day of August, 2000.

CARL F. HUEFNER
Attorney for Appellees

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CERTIFICATE OF SERVICE

I hereby certify that I caused two (2) true and correct copies of the foregoing Brief of Appellees 2825 E Cottonwood Parkway, L.C., 2755 E Cottonwood Parkway, L.C. and 2855 E Cottonwood Parkway, L.C. to be mailed, postage prepaid, this 9th day of August, 2000, to the following:

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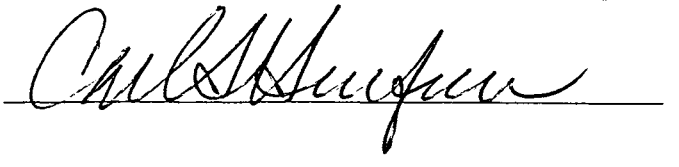

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ADDENDUM

EXHIBIT "A-1"

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JAMES AND CAROL BUSCHE, : MINUTE ENTRY

Plaintiff, : CASE NO.990907747
Judge Frank G. Noel

Vs. :

SALT LAKE COUNTY, and incorporated Utah County, WALLNET INVESTMENT, LC, a Utah limited liability company, RBCSU REALTY< LLC, a Utah limited liability company, REGENCY BLUE CROSS BLUE SHIELD OF UTAH, CORP., a Utah corporation; MILL POINTE ASSOCIATES, LLC, a Utah limited liability company; 2825 E. COTTONWOOD PARKWAY, LC, a limited liability company; 2755 E. COTTONWOOD PARKWAY; LC, a Utah limited liability company; 2855 E. COTTONWOOD PARKWAY, LC, a Utah limited liability company, :

Defendants. :

Now before the Court is a Motion To Dismiss filed by defendants 2755 E. Cottonwood Parkway, LC, a Utah limited liability company and others. The Court has reviewed the memos filed in connection with the Motion and now rules as follows:

The County Land Use and Development Act, Section 17-27-201 Utah Code Annotated provides that County Planning Commissions have the authority to hear and decide matters involving conditional use permits, and any other powers delegated to it by the County legislative body. The Salt Lake County Zoning Ordinance Chapter 19.84 et.seq. provides that no public hearing need be held to grant or deny a conditional use permit. The Court is of the opinion that this grant of authority would also extend to the modification of conditional use permits. The County Zoning Ordinances also provide that the Planning Commission may delegate the authority to approve, modify, and/or deny conditional uses to the Development Services Division Director.

Plaintiffs claim is that the procedure in this case was flawed and that the Director is not able to delegate the authority to modify conditional use permits to his own senior planner within his office. The Court is of the opinion that plaintiff has failed to provide any persuasive authority for its position. Both the statutory and applicable county ordinance provisions appear to authorize the procedures in this case.

The Court is also of the opinion that no due process violations have occurred.

Accordingly, the defendants Motion To Dismiss is granted. Counsel for defendants are to prepare and appropriate Order.

Dated this 10 day of NOVEMBER, 1999:

Frank G. Noel
Presiding Judge

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing MINUTE ENTRY, postage prepaid, to the following, this _____ day of NOVEMBER, 1999:

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Deputy Court Clerk

EXHIBIT "A-2"

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Attorneys for Defendants, 2755, 2825 and 2855 E Cottonwood Parkway, LC, Utah limited liability companies

IN THE THIRD JUDICIAL DISTRICT COURT FOR THE STATE OF UTAH

SALT LAKE COUNTY, STATE OF UTAH

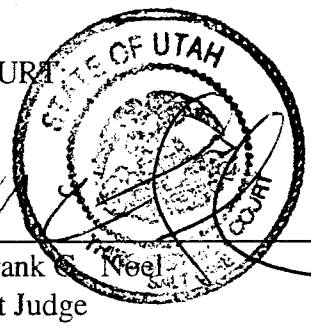
JAMES AND CAROL BUSCHE, Plaintiffs, **vs.** **SALT LAKE COUNTY, an incorporated Utah county, WALLNET INVESTMENT, LC, a Utah limited liability company, RBCSU REALTY, LLC, a Utah limited liability company; REGENCE BLUE CROSS BLUE SHIELD OF UTAH, CORP., a Utah corporation; MILL POINTE ASSOCIATES, LLC, a Utah limited liability company; 2825 E COTTONWOOD PARKWAY, LC, a Utah limited liability company; 2755 E COTTONWOOD PARKWAY, LC, a Utah limited liability company; 2855 E COTTONWOOD PARKWAY, LC, a Utah limited liability company,** Defendants.	**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS** Civil No. 990907747 Honorable Frank G. Noel

The Court, having considered the pleadings and the parties' respective memoranda in support of and in opposition to the Defendants' Motion to Dismiss, and now being fully advised, hereby

ORDERS, ADJUDGES & DECREES that Defendants' Motion to Dismiss be granted and all claims asserted by the Plaintiffs in their complaint on file herein are dismissed with prejudice and on the merits.

DATED this 10 day of December, 1999.

BY THE COURT:



Honorable Frank G. Noel
District Court Judge

Approved as to form:

BAIRD & JONES, LC

Bruce Baird, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on the ___ day of December, 1999, I caused to be mailed, postage prepaid, a true and correct copy of the foregoing **ORDER GRANTING DEFENDANTS' MOTION TO DISMISS** to the following:

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EXHIBIT "B"

CHAPTER 26

COUNTY HOSPITALS

Section
17-26-1. Jurisdiction transferred to commissioners.

17-26-1. Jurisdiction transferred to commissioners.

All county hospitals established under Chapter 106, Laws of 1917, shall hereafter be under the jurisdiction of the county legislative body, and the office of trustees therefor is abolished.

History: Code Report; R.S. 1933 & C. 1943, 19-23-1; L. 1993, ch. 227, § 149.

Compiler's Notes. — Laws 1917, ch. 106 was repealed by the Revised Statutes of Utah, 1933. See § 68-2-3.

Cross-References. — Construction of county hospitals, §§ 17-5-239, 17-15-3.

Health Care Facility Licensure and Inspection Act, § 26-21-1 et seq.

Service area providing hospital services, § 17A-2-403.

CHAPTER 27

COUNTY LAND USE DEVELOPMENT AND MANAGEMENT ACT

Revision of Chapter. — Laws 1991, ch. 235 revised this chapter by repealing §§ 17-27-1 to 17-27-16, 17-27-18, 17-27-19, 17-27-21 to 17-27-23, and 17-27-25 to 17-27-27, Utah Code Annotated 1953, and as last amended or enacted by L. 1953, ch. 27, §§ 1, 2; 1981, ch. 44, §§ 6 to 11; 1983, ch. 37, §§ 3, 4; 1983, ch. 67, § 1; 1983, ch. 70, § 1; 1983, ch. 244, § 1; 1988, ch. 186, §§ 1 to 4; 1990, ch. 183, §§ 5, 6; 1990, ch. 309, § 2, and enacting §§ 17-27-101 through 17-27-1003, effective July 1, 1992.

Section 17-27-17, as last amended by L. 1953, ch. 27, § 1, relating to district planning commissions, was repealed by L. 1983, ch. 253, § 1.

Section 17-27-20, Utah Code Annotated 1953, relating to submission of plans to state planning commission, was repealed by Laws 1983, ch. 253, § 1.

Section 17-27-24 (L. 1941, ch. 23, § 24; C. 1943, 19-24-24), relating to the recording of zoning regulations and maps, was repealed by Laws 1977, ch. 73, § 1.

Part 1

General Provisions

Section
17-27-101. Short title.
17-27-102. Purpose.
17-27-103. Definitions — Notice.
17-27-103.5. Notice to nearby entities.
17-27-104. Stricter requirements.
17-27-104.5. State and federal property.
17-27-105. Property owned by other government units — Effect of land use and development ordinances.
17-27-105.5. Manufactured homes.
17-27-106. Limit on plan check fees.

Part 2

Planning Commission

Section
17-27-200.5. Townships.
17-27-201. Establishment of commission — Appointment or election, term, vacancy, and compensation.
17-27-202. Organization and procedures.
17-27-203. Use of state data.
17-27-204. Powers and duties.
17-27-205. Entrance upon land.
17-27-206. Planning and zoning board dissolved.

Part 3

General Plan

Part 4

Zoning Ordinance

Part 5

Residential Facilities for Elderly

Part 6

Residential Facilities for Persons with a Disability

Part 7

Board of Adjustment

Part 8

Subdivisions

Part 9

Access to Solar Energy

Part 10

Appeals and Enforcement

PART 1

GENERAL PROVISIONS

17-27-101. Short title.

This chapter shall be known as the "County Land Use Development and Management Act."

History: C. 1953, 17-27-101, enacted by L. 1991, ch. 235, § 56.

COLLATERAL REFERENCES

Utah Law Review. — Note, Urban Planning and Development — Race and Poverty — Past, Present and Future, 1971 Utah L. Rev. 46.

Utah Environmental Problems and Legislative Response, 1972 Utah L. Rev. 479, 1973 Utah L. Rev. 1.

Preserving Utah's Open Spaces, 1973 Utah L. Rev. 164.

The Availability of 42 U.S.C. § 1983 in Challenges of Land Use Planning Regulations: A Developer's Dream Come True?, 1982 Utah L. Rev. 571.

The Failure of Subdivision Control in the Western United States: A Blueprint for Local Government Action, 1988 Utah L. Rev. 569.

Am. Jur. 2d. — 83 Am. Jur. 2d Zoning and Planning § 17 et seq.

C.J.S. — 101A C.J.S. Zoning and Land Planning § 1 et seq.

A.L.R. — What constitutes "incidental" or "accessory" use of property zoned, and primarily used, for residential purposes, 54 A.L.R.4th 1034.

Zoning regulation of intoxicating liquor as preempted by state law, 65 A.L.R.4th 555.

Construction and effect of statute requiring that zoning application be treated as approved if not acted on within specified period of time, 66 A.L.R.4th 1012.

Residential off-street parking requirements, 71 A.L.R.4th 529.

Validity and construction of zoning laws setting minimum requirements for floorspace or cubic footage inside residence, 87 A.L.R.4th 294.

Construction and application of terms "agricultural," "farm," "farming," or the like, in zoning regulations, 38 A.L.R.5th 357.

Applicability of zoning regulations to governmental projects or activities, 53 A.L.R.5th 1.

17-27-102. Purpose.

To accomplish the purpose of this chapter, and in order to provide for the health, safety, and welfare, and promote the prosperity, improve the morals, peace and good order, comfort, convenience, and aesthetics of the county and its present and future inhabitants and businesses, to protect the tax base, secure economy in governmental expenditures, foster the state's agricultural and other industries, protect both urban and nonurban development, and to protect property values, counties may enact all ordinances, resolutions, and rules that they consider necessary for the use and development of land within the county, including ordinances, resolutions, and rules governing uses, density, open spaces, structures, buildings, energy-efficiency, light and air, air quality, transportation and public or alternative transportation, infrastructure, public facilities, vegetation, and trees and landscaping, unless those ordinances, resolutions, or rules are expressly prohibited by law.

History: C. 1953, 17-27-102, enacted by L. 1991, ch. 235, § 57; 1992, ch. 93, § 4.

NOTES TO DECISIONS

Analysis

Zoning power in general.
Cited.

Zoning power in general.

In pursuing its authority to zone a county, a county commission is performing a legislative function and has wide discretion. The action of the zoning authority is endowed with a presumption of validity and the courts will not interfere with a commission action unless it clearly appears to be beyond its power or is unconstitutional. Gayland v. Salt Lake County, 11 Utah 2d 307, 358 P.2d 633 (1961).

Exercise of zoning power is a legislative function to be exercised by the legislative bodies of municipalities; the wisdom of a zoning plan, its necessity, and the nature and boundaries of the zoned district are all matters within the legislative discretion, and Supreme Court will avoid substituting its judgment for that of the zoning authority. Crestview-Holladay Homeowners Ass'n v. Engh Floral Co., 545 P.2d 1150 (Utah 1976).

Cited in Patterson v. Utah County Bd. of Adjustment, 893 P.2d 602 (Utah Ct. App. 1995).

17-27-103. Definitions — Notice.

(1) As used in this chapter:

(a) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.

(b) "Chief executive officer" means the county executive, or if the county has adopted an alternative form of government, the official who exercises the executive powers.

(c) "Conditional use" means a land use that, because of its unique characteristics or potential impact on the county, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(d) "Constitutional taking" has the meaning as defined in Section 63-34-13.

(e) "County" means the unincorporated area of the county.

(f) "Elderly person" means a person who is 60 years old or older, who desires or needs to live with other elderly persons in a group setting, but who is capable of living independently.

(g) "Gas corporation" has the same meaning as defined in Section 54-2-1.

(h) (i) "General plan" means a document that a county adopts that sets forth general guidelines for proposed future development of the land within the county, as set forth in Sections 17-27-301 and 17-27-302.

(ii) "General plan" includes what is also commonly referred to as a "master plan."

(i) "Interstate pipeline company" means a person or entity engaged in natural gas transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

(j) "Intrastate pipeline company" means a person or entity engaged in natural gas transportation that is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

(k) "Legislative body" means the county legislative body, or for a county that has adopted an alternative form of government, the body exercising legislative powers.

(l) "Lot line adjustment" means the relocation of the property boundary line between two adjoining lots with the consent of the owners of record.

(m) "Municipality" means a city or town.

(n) "Nonconforming structure" means a structure that:

(i) legally existed before its current zoning designation; and

(ii) because of subsequent zoning changes, does not conform with the zoning regulation's setback, height restrictions, or other regulations that govern the structure.

(o) "Nonconforming use" means a use of land that:

(i) legally existed before its current zoning designation;

(ii) has been maintained continuously since the time the zoning regulation governing the land changed; and

(iii) because of subsequent zoning changes, does not conform with the zoning regulations that now govern the land.

(p) "Official map" means a map of proposed streets that has the legal effect of prohibiting development of the property until the county develops the proposed street.

(q) (i) "Residential facility for elderly persons" means a single-family or multiple-family dwelling unit that meets the requirements of Part 5 and any ordinance adopted under authority of that part.

(ii) "Residential facility for elderly persons" does not include a health care facility as defined by Section 26-21-2.

(r) "Special district" means all entities established under the authority of Title 17A, Special Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or unit of the state.

(s) "Street" means public rights-of-way, including highways, avenues, boulevards, parkways, roads, lanes, walks, alleys, viaducts, subways, tunnels, bridges, public easements, and other ways.

(t) (i) "Subdivision" means any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(ii) "Subdivision" includes the division or development of land whether by deed, metes and bounds description, devise and testacy, lease, map, plat, or other recorded instrument.

(iii) "Subdivision" does not include:

(A) a bona fide division or partition of agricultural land for agricultural purposes;

(B) a recorded agreement between owners of adjoining properties adjusting their mutual boundary if:

(I) no new lot is created; and

(II) the adjustment does not result in a violation of applicable zoning ordinances;

(C) a recorded document, executed by the owner of record, revising the legal description of more than one contiguous parcel of property into one legal description encompassing all such parcels of property; or

(D) a bona fide division or partition of land in a county other than a first class county for the purpose of siting, on one or more of the resulting separate parcels, an unmanned facility appurtenant to a pipeline owned or operated by a gas corporation, interstate pipeline company, or intrastate pipeline company.

(iv) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a "subdivision" under this Subsection (1)(t) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the county's subdivision ordinance.

(u) "Unincorporated" means the area outside of the incorporated boundaries of cities and towns.

(2) (a) A county meets the requirements of reasonable notice required by this chapter if it:

(i) posts notice of the hearing or meeting in at least three public places within the jurisdiction and publishes notice of the hearing or meeting in a newspaper of general circulation in the jurisdiction, if one is available; or

(ii) gives actual notice of the hearing or meeting.

(b) A county legislative body may enact an ordinance establishing stricter notice requirements than those required by this Subsection (2).

(c) (i) Proof that one of the two forms of notice authorized by this subsection was given is prima facie evidence that notice was properly given.

(ii) If notice given under authority of this section is not challenged as provided in Section 17-27-1001 within 30 days from the date of the meeting for which the notice was given, the notice is considered adequate and proper.

History: C. 1953, 17-27-103, enacted by L. 1991, ch. 235, § 58; 1992, ch. 23, § 25; 1993, ch. 227, § 150; 1995, ch. 179, § 8; 1997, ch. 90, § 1; 1997, ch. 108, § 5; 1997, ch. 151, § 3; 1998, ch. 89, § 2; 1999, ch. 139, § 1; 1999, ch. 291, § 4.

Amendment Notes. — The 1995 amendment, effective May 1, 1995, added Subsection (1)(i), redesignated the following subsections accordingly, and made stylistic changes in Subsection (1)(g)(i).

The 1997 amendment by ch. 90, effective May 5, 1997, deleted "or of commercial, manufacturing, or industrial land for commercial, manufacturing or industrial purposes" from the end of Subsection (1)(r)(iii)(A) (Subsection (1)(p)(iii)(A) of the reconciled version).

The 1997 amendment by ch. 108, effective May 5, 1997, deleted definitions of "handicapped person" and "residential facility for handicapped persons," redesignating subsections accordingly, and made a stylistic change. For present provisions covering residences for persons with disabilities, see § 17-27-605.

The 1997 amendment by ch. 151, effective May 5, 1997, added Subsections (1)(r)(iii)(B) and (C) (which are Subsections (1)(p)(iii)(B) and (C) in the reconciled version).

The 1998 amendment, effective May 4, 1998, added Subsection (1)(p)(iv).

The 1999 amendment by ch. 139, effective May 3, 1999, added Subsections (1)(f), (1)(h), (1)(i), and (1)(s)(iii)(D) (Subsections (1)(g), (1)(i), (1)(j), and (1)(t)(iii)(D) in the reconciled version), redesignating the other subsections accordingly and making related changes.

The 1999 amendment by ch. 291, effective May 3, 1999, added Subsection (1)(d), making related designation changes and updating the internal references.

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

17-27-103.5. Notice to nearby entities.

(1) As used in this section, "predevelopment activity" means a public hearing concerning or consideration by the planning commission or the county legislative body of:

(a) a proposed change in zoning designation;

(b) a preliminary or final plat describing a multiple-unit residential development or a commercial or industrial development; or

(c) a proposed modification of the county's general plan whereby the vehicular capacity of a county road is proposed to be increased.

(2) The planning commission or legislative body, as the case may be, of each county shall provide notice of predevelopment activity occurring in the unincorporated county to the legislative body of:

(a) each municipality whose boundaries are within one mile of the property that is the subject of the predevelopment activity; and

(b) each county that has unincorporated territory within one mile of the property that is the subject of the predevelopment activity.

(3) The notice required by Subsection (2) shall be provided at least seven days before the predevelopment activity occurs.

(4) A planning commission or county legislative body meets the notice requirements of Subsection (2) by mailing to each appropriate legislative body, at least seven days before the predevelopment activity occurs, a copy of a planning commission or county legislative body meeting agenda that contains information sufficient to enable a reasonable reader to understand that predevelopment activity is expected to occur in the county and the location of the property that is the subject of the predevelopment activity.

(5) If notice given under this section is not challenged under Section 17-27-1001 within 30 days after the action for which notice is given, the notice is considered adequate and proper.

History: C. 1953, 17-27-103.5, enacted by L. 1999, ch. 339, § 2.

Effective Dates. — Laws 1999, ch. 339 became effective on May 3, 1999, pursuant to Utah Const., Art. VI, Sec. 25.

17-27-104. Stricter requirements.

(1) Except as provided in Subsection (2), counties may enact ordinances imposing stricter requirements or higher standards than are required by this chapter.

(2) A county may not impose stricter requirements or higher standards than are required by:

(a) Section 17-27-105;

(b) Section 17-27-105.5;

(c) Part 5, Residential Facilities for Elderly Persons; and

(d) Part 6, Residential Facilities for Handicapped Persons.

History: C. 1953, 17-27-104, enacted by L. 1991, ch. 235, § 59; 1992, ch. 23, § 26; 1996, ch. 55, § 3.

Amendment Notes. — The 1996 amendment, effective April 29, 1996, added Subsection (2)(b) and redesignated former Subsections (2)(b) and (2)(c) as (2)(c) and (2)(d).

NOTES TO DECISIONS

Alcoholic beverage control.

Authority of liquor control commission to decide on the number and location of liquor stores held superior to zoning by the local county authority under former chapter. See Salt Lake County v. Liquor Control Comm'n, 11 Utah 2d 235, 357 P.2d 488 (1960).

COLLATERAL REFERENCES

C.J.S. — 101 C.J.S. Zoning § 10.

A.L.R. — Zoning regulation of intoxicating liquor as preempted **by state law, 65** A.L.R.4th 555.

17-27-104.5. State and federal property.

Unless otherwise provided by law, nothing contained in Parts 4 and 8 of this chapter may be construed as giving the planning commission or the legislative body jurisdiction over properties owned by the state or the United States government.

History: C. 1953, 17-27-104.5, enacted by L. 1995, ch. 179, § 9.
Effective Dates. — Laws 1995, ch. 179 became effective on May 1, 1995, pursuant to Utah Const., Art. VI. Sec. 25.

17-27-105. Property owned by other government units — Effect of land use and development ordinances.

(1) (a) Each county, municipality, school district, special district, and political subdivision of Utah shall conform to the land use and development ordinances of any county when installing, constructing, operating, or otherwise using any area, land, or building situated within that county only in a manner or for a purpose that conforms to that county's ordinances.

(b) In addition to any other remedies provided by law, when a county's land use and development ordinances are being violated or about to be violated by another political subdivision, that county may institute injunction, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin, abate, or remove the improper installation, improvement, or use.

(2) A school district is subject to a county's land use regulations under this chapter, except that a county may not:

(a) impose requirements for landscaping, fencing, aesthetic considerations, construction methods or materials, building codes, building use for educational purposes, or the placement or use of temporary classroom facilities on school property;

(b) require a school district to participate in the cost of any roadway or sidewalk not reasonably necessary for the safety of school children and not located on or contiguous to school property, unless the roadway or sidewalk is required to connect an otherwise isolated school site to an existing roadway;

(c) require a district to pay fees not authorized by this section;

(d) provide for inspection of school construction or assess a fee or other charges for inspection, unless the school district is unable to provide for inspection by an inspector, other than the project architect or contractor, who is qualified under criteria established by the state superintendent;

(e) require a school district to pay any impact fee for an improvement project that is not reasonably related to the impact of the project upon the need that the improvement is to address; or

(f) impose regulations upon the location of a project except as necessary to avoid unreasonable risks to health or safety.

(3) Subject to Section 53A-20-108, a school district shall coordinate the siting of a new school with the county in which the school is to be located, to avoid or mitigate existing and potential traffic hazards to maximize school safety.

History: C. 1953, 17-27-105, enacted by L. 1991, ch. 235, § 60; 1992, ch. 23, § 27; 1999, ch. 149, § 2.
Amendment Notes. — The 1999 amendment, effective May 3, 1999, in Subsection (2)(d) substituted "the school district is unable to provide" for "neither the school district nor the state superintendent has provided," deleted "with the approval of the state building board and state fire marshal" after "state superintendent" at the end, and made stylistic changes and added Subsection (3).

COLLATERAL REFERENCES

C.J.S. — 101 C.J.S. Zoning § 135.
A.L.R. — Mandamus to compel zoning officials to cancel permit granted in violation of zoning regulation, 68 A.L.R.3d 166.
Applicability of zoning regulation to nongovernmental lessee of government-owned property, 84 A.L.R.3d 1187.
Laches as defense in suit by governmental entity to enjoin zoning violation, 73 A.L.R.4th 870.

17-27-105.5. Manufactured homes.

(1) For purposes of this section, a manufactured home is the same as defined in Section 58-56-3, except that the manufactured home must be attached to a permanent foundation in accordance with plans providing for vertical loads, uplift, and lateral forces and frost protection in compliance with the applicable building code. All appendages, including carports, garages, storage buildings, additions, or alterations must be built in compliance with the applicable building code.

(2) A manufactured home may not be excluded from any zone or area in which a single-family residence would be permitted, provided the manufactured home complies with all local zoning, building code, and subdivision requirements, including any restrictive covenants, applicable to single-family residence within that zone or area.

History: C. 1953, 17-27-105.5, enacted by L. 1996, ch. 55, § 4.
Effective Dates. — Laws 1996, ch. 55 became effective on April 29, 1996, pursuant to Utah Const., Art. VI, Sec. 25.

17-27-106. Limit on plan check fees.

(1) A county may not impose or collect a fee for reviewing or approving the plans for a commercial or residential building that exceeds the lessor of:

(a) the actual cost of performing the plan review; and

(b) 65% of the amount the county charges for a building permit fee for that building.

(2) (a) For purposes of this Subsection (2):

(i) "Identical plans" means building plans submitted to a county that:

(A) are substantially identical to building plans that were previously submitted to and reviewed and approved by the county; and

(B) describe a building that is:

(I) located on land zoned the same as the land on which the building described in the previously approved plans is located; and

(II) subject to the same geological and meteorological conditions and the same law as the building described in the previously approved plans.

(ii) "Nominal fee" means a fee that reasonably reimburses a county only for time spent and expenses incurred in:

(A) verifying that building plans are identical plans; and

(B) reviewing and approving those minor aspects of identical plans that differ from the previously reviewed and approved building plans referred to in Subsection (2)(a)(i).

(b) Subject to Subsection (1), a county may impose and collect only a nominal fee for reviewing and approving identical plans.

History: C. 1953, 17-27-106, enacted by L. 1999, ch. 169, § 2.
Effective Dates. — Laws 1999, ch. 169 became effective on May 3, 1999, pursuant to Utah Const., Art. VI, Sec. 25.

PART 2
PLANNING COMMISSION

17-27-200.5. Townships.

(1) As used in this part:

(a) "Township" means a contiguous, geographically defined portion of the unincorporated area of a county, established under this part or reconstituted or reinstated under Subsection 17-27-200.5(2)(e) of this part, with planning and zoning functions as exercised through the township planning commission, as provided in this part, but with no legal or political identity separate from the county and no taxing authority, except that "township" means a former township under Chapter 308, Laws of Utah 1996, where the context so indicates.

(b) "Unincorporated" means not within a municipality.

(2) (a) (i) Subject to Subsection (2)(a)(ii), a county legislative body may enact an ordinance establishing a township within the unincorporated county or dividing the unincorporated county into townships.

(ii) Before enacting an ordinance under Subsection (2)(a)(i), the county legislative body shall, after providing reasonable advance notice, hold a public hearing on the proposal to establish a township or to divide the unincorporated county into townships.

(b) If 25% of the private real property owners in a contiguous area of the unincorporated county petition the county legislative body to establish a township for that area, the county legislative body shall:

(i) hold a public hearing to discuss the petition;

(ii) at least one week before the public hearing, publish notice of the petition and the time, date, and place of the public hearing at least once in a newspaper of general circulation in the county; and

(iii) at the public hearing, consider oral and written testimony from the public and vote on the question of whether or not to establish a township.

(c) If the county legislative body establishes a township pursuant to a petition, the members of the township planning commission shall be appointed as provided in Subsection 17-27-201(3)(b) to perform the duties established in this part for the township.

(d) Except as provided in Subsection (2)(e), each township shall contain:

(i) in a county of the first, second, or third class:

(A) at least 20% but not more than 80% of:

(I) the total private land area in the unincorporated county; or

(II) the total value of locally assessed taxable property in the unincorporated county; or

(B) at least 5% of the total population of the unincorporated county; or

(ii) in a county of the fourth, fifth, or sixth class:

(A) at least 20% but not more than 80% of:

(I) the total private land area in the unincorporated county; or

(II) the total value of locally assessed taxable property in the unincorporated county; and

(B) at least 25% of the total population of the unincorporated county.

(e) (i) (A) A township that was dissolved under Chapter 389, Laws of Utah 1997, is reinstated as a township under this part with the same boundaries and name as before the dissolution, if the former township consisted of a single, contiguous land area.

(B) Notwithstanding Subsection (2)(e)(i)(A), a county legislative body may enact an ordinance establishing as a township under this part a former township that was dissolved under Chapter 389, Laws of Utah 1997, even though the former township does not qualify to be reinstated under Subsection (2)(e)(i)(A).

(C) A township reinstated under Subsection (2)(e)(i)(A) or established under Subsection (2)(e)(i)(B) shall be subject to the provisions of this part.

(ii) Each planning district established under Chapter 225, Laws of Utah 1995, and each township planning district established under Chapter 389, Laws of Utah 1997, shall continue in existence as a township, subject to the provisions of this part.

(f) (i) After May 1, 2002, the legislative body of each county in which a township that has been reconstituted under Chapter 389, Laws of Utah 1997, or reinstated under Subsection (2)(e)(i) is located shall review the township and determine whether its continued existence is advisable.

(ii) In conducting the review required under Subsection (2)(f)(i), the county legislative body shall hold a public hearing with reasonable, advance, published notice of the hearing and the purpose of the hearing.

(iii) Each township that has been reconstituted under Chapter 389, Laws of Utah 1997, or reinstated or established under Subsection (2)(e)(i) and its planning commission shall continue in effect, unless, within 90 days after conducting the review and public hearing required under Subsections (2)(f)(i) and (ii), the county legislative body by ordinance dissolves the township and its planning commission.

(g) A township established under this section on or after May 5, 1997, may use the word "township" in its name.

(3) (a) If the county legislative body establishes a township without having received a petition, the county legislative body may:

(i) assign to the countywide planning commission the duties established in this part that would have been assumed by a township planning commission designated under Subsection (3)(a)(ii); or

(ii) designate a planning commission for the township.

(b) (i) If the county legislative body fails to designate a planning commission for a township, 40% of the private real property owners in

the area proposed to be included in the township, as shown by the last county assessment roll, may petition the county legislative body to designate and appoint a planning commission for the township.

(ii) If the county legislative body determines that the petition is validly signed by 40% of the private real property owners in the township, as shown by the last county assessment roll, it shall designate and appoint a planning commission for the township.

(4) (a) Except as provided in Subsection (2)(f)(iii), a county legislative body may dissolve township planning commissions created under the authority of this section only by following the procedures and requirements of this Subsection (4).

(b) If 20% of the private real property owners in the county petition the county legislative body to dissolve township planning commissions and to appoint a countywide planning commission, the county legislative body shall:

(i) hold a public hearing to discuss the petition;

(ii) at least one week before the public hearing, publish notice of the petition and the time, date, and place of the public hearing at least once in a newspaper of general circulation in the county; and

(iii) at the public hearing, consider oral and written testimony from the public and vote on the question of whether or not to dissolve township planning commissions and to appoint a countywide planning commission.

(c) (i) If the county legislative body fails to dissolve township planning commissions and to appoint a countywide planning commission when petitioned to do so by private real property owners under this subsection, 40% of private real property owners in the county, as shown by the last county assessment roll, may petition the county legislative body to dissolve the township planning commissions and to appoint a countywide planning commission.

(ii) If the county legislative body determines that the petition is validly signed by 40% of private real property owners in the township, as shown by the last county assessment roll, it shall dissolve the township planning commissions and appoint a countywide planning commission.

History: C. 1953, 17-27-200.5, enacted by L. 1995, ch. 225, § 1; 1996, ch. 157, § 1; 1997, ch. 389, § 53; 1997 (2nd S.S.), ch. 3, § 12.

Amendment Notes. — The 1996 amendment, effective April 29, 1996, inserted "establishing a planning district within the county or" in Subsection (1)(a); inserted "a contiguous area of" and substituted "25%" for "20%" and "a planning district for that area" for "planning districts" in Subsection (1)(b); substituted "a planning district" for "planning districts" and made a stylistic change in Subsections (1)(b)(iii) and (1)(c); inserted "In a county of the first or second class" and made a related stylistic change in Subsection (1)(d); and substituted "Subsection (3)" for "this section" in Subsection (3)(a).

The 1997 amendment, effective May 5, 1997, substituted "township planning district" for "planning district," "members of the township planning district planning commission" for "district planning commissioners," and "planning commission" for "district planning commission" throughout the section; rewrote Subsection (1)(d) and added Subsections (1)(e) through (1)(g); added the exception at the beginning of Subsection (3)(a); and made stylistic changes throughout the section.

The 1997 (2nd S.S.) amendment, effective July 17, 1997, rewrote the section.

Compiler's Notes. — Laws 1996, ch. 308, cited in Subsection (1)(a), enacted Chapter 27a of this title, establishing a procedure for the creation of townships, which was repealed in 1997. Laws 1995, ch. 225, cited in Subsection (2)(e)(ii), enacted this section and amended sections throughout this part. Laws 1997, ch. 389, cited in Subsections (2)(e) and (f), amended this section, repealed Chapter 27a of this title, and revised Title 10, Chapter 2, providing for the creation of municipalities.

Effective Dates. — Laws 1995, ch. 225, § 7 makes the act effective on March 18, 1995.

COLLATERAL REFERENCES

Utah Law Review. — Recent Legislative Developments: Municipal Law Amendments, 1997 Utah L. Rev. 1198.

17-27-201. Establishment of commission — Appointment or election, term, vacancy, and compensation.

(1) (a) Except as provided in Subsection (1)(b), each county shall enact an ordinance establishing a countywide planning commission for the unincorporated areas of the county not within a township.

(b) Subsection (1)(a) does not apply if all of the county is included within any combination of:

(i) municipalities; and

(ii) townships with their own planning commissions.

(2) The ordinance establishing a countywide planning commission shall define:

(a) the number and terms of the members;

(b) the mode of appointment;

(c) the procedures for filling vacancies and removal from office; and

(d) other details relating to the organization and procedures of the planning commission.

(3) (a) If the county establishes township planning commissions, the county legislative body shall enact an ordinance defining appointment procedures, procedures for filling vacancies and removing members from office, and other details relating to the organization and procedures of each township planning commission.

(b) The planning commission for each township shall consist of seven members who, except as provided in Subsection (3)(e), shall be appointed by:

(i) in a county operating under a form of government in which the executive and legislative functions of the governing body are separated, the county executive with the advice and consent of the county legislative body; or

(ii) in a county operating under a form of government in which the executive and legislative functions of the governing body are not separated, the county legislative body.

(c) (i) Members shall serve four-year terms and until their successors are appointed or, as provided in Subsection (3)(e), elected and qualified.

(ii) Notwithstanding the provisions of Subsection (3)(c)(i) and except as provided in Subsection (3)(e), members of the first planning commissions shall be appointed so that, for each commission, the terms of at least one member and no more than two members expire each year.

(d) (i) Except as provided in Subsection (3)(d)(ii), each member of a township planning commission shall be a registered voter residing within the township.

(ii) (A) Notwithstanding Subsection (3)(d)(i), one member of a planning commission of a township reconstituted under Chapter 389, Laws of Utah 1997, or reinstated or established under Subsection 17-27-200.5(2)(e)(i) may be an appointed member who is a registered voter residing outside the township if that member:

(I) is an owner of real property located within the township; and

(II) resides within the county in which the township is located.

(B) (I) Each appointee under Subsection (3)(d)(ii)(A) shall be chosen by the township planning commission from a list of three persons submitted by the county legislative body.

(II) If the township planning commission has not notified the county legislative body of its choice under Subsection (3)(d)(ii)(B)(I) within 60 days of the township planning commission's receipt of the list, the county legislative body may appoint one of the three persons on the list or a registered voter residing within the township as a member of the township planning commission.

(e) (i) The legislative body of each county in which a township reconstituted under Chapter 389, Laws of Utah 1997, or reinstated or established under Subsection 17-27-200.5(2)(e)(i) is located shall enact an ordinance that provides for the election of at least three members of the planning commission of that township.

(ii) The election of planning commission members under Subsection (3)(e)(i) shall coincide with the election of other county officers during even-numbered years. Approximately half the elected planning commission members shall be elected every four years during elections held on even-numbered years, and the remaining elected members shall be elected every four years on alternating even-numbered years.

(f) (i) (A) The legislative body of each county in which a township reconstituted under Chapter 389, Laws of Utah 1997, or reinstated or established under Subsection 17-27-200.5(2)(e)(i) is located shall enact an ordinance appointing each elected member of the planning and zoning board of the former township, established under Chapter 308, Laws of Utah 1996, as a member of the planning commission of the reconstituted or reinstated township. Each member appointed under this subsection shall be considered an elected member.

(B) (I) Except as provided in Subsection (3)(f)(i)(B)(II), the term of each member appointed under Subsection (3)(f)(i)(A) shall continue until the time that the member's term as an elected member of the former township planning and zoning board would have expired.

(II) Notwithstanding Subsection (3)(f)(i)(B)(I), the county legislative body may adjust the terms of the members appointed under Subsection (3)(f)(i)(A) so that the terms of those members coincide with the schedule under Subsection (3)(e)(ii) for elected members.

(ii) Subject to Subsection (3)(f)(iii), the legislative body of a county in which a township reconstituted under Chapter 389, Laws of Utah 1997, or reinstated or established under Subsection 17-27-200.5(2)(e)(i) is located may enact an ordinance allowing each appointed member of the planning and zoning board of the former township, established under Chapter 308, Laws of Utah 1996, to continue to hold office as a member of the planning commission of the reconstituted or reinstated township until the time that the member's term as a member of the former township's planning and zoning board would have expired.

(iii) If a planning commission of a township reconstituted under Chapter 389, Laws of Utah 1997, or reinstated or established under Subsection 17-27-200.5(2)(e)(i) has more than one appointed member who resides outside the township, the legislative body of the county in which that township is located shall, within 15 days of the effective date of this Subsection (3)(f)(iii), dismiss all but one of the appointed members who reside outside the township, and a new member shall be appointed under Subsection (3)(b) no later than August 16, 1997, to fill the position of each dismissed member.

(g) (i) Except as provided in Subsection (3)(g)(ii), upon the appointment or election of all members of a township planning commission, each township planning commission under this section shall begin to exercise the powers and perform the duties provided in Section 17-27-204 with respect to all matters then pending that previously had been under the jurisdiction of the countywide planning commission or township planning and zoning board.

(ii) Notwithstanding Subsection (3)(g)(i), if the members of a former township planning and zoning board continue to hold office as members of the planning commission of the township planning district under an ordinance enacted under Subsection (3)(f), the township planning commission shall immediately begin to exercise the powers and perform the duties provided in Section 17-27-204 with respect to all matters then pending that had previously been under the jurisdiction of the township planning and zoning board.

(4) The legislative body may fix per diem compensation for the members of the planning commission, based on necessary and reasonable expenses and on meetings actually attended.

History: C. 1953, 17-27-201, enacted by L. 1991, ch. 235, § 61; 1995, ch. 179, § 10; 1995, ch. 225, § 2; 1997, ch. 389, § 54; 1997 (2nd S.S.), ch. 3, § 13; 1998, ch. 13, § 11.

Amendment Notes. — The 1995 amendment by ch. 225, effective March 18, 1995, redesignated former Subsection (1) as Subsections (1) and (2), making related internal designation changes; inserted "one countywide" in Subsection (1)(a); added Subsection (1)(b), making related changes; added "If the county establishes a countywide planning commission" to the beginning of Subsection (2); added Subsection (3); redesignated former Subsection (2) as Subsection (4); and made stylistic changes.

The 1995 amendment by ch. 179, effective May 1, 1995, deleted former Subsections (1)(a)(i) to (1)(a)(iv), specifying the number and terms of the members, and added Subsection (1)(b)(i)(which is Subsection (2)(a) in the reconciled version), redesignating the other subsections accordingly.

The 1997 amendment, effective May 5, 1997, substituted "planning commission" for "district planning commission" and "township planning district" for "planning district" throughout the section; rewrote Subsections (3)(b) through (3)(c)(ii); and added Subsections (3)(d) through (3)(g)(ii).

The 1997 (2nd S.S.) amendment, effective July 17, 1997, rewrote the section.

The 1998 amendment, effective May 4, 1998, substituted "no later than August 16, 1997" for "within 30 days of the effective date of this

Subsection (3)(f)(iii)" in Subsection (3)(f)(iii).

Compiler's Notes. — Laws 1997, ch. 389, cited in Subsections (3)(e) and (f), amended this section, repealed Chapter 27a of this title, and revised Title 10, Chapter 2, providing for the creation of municipalities. Laws 1996, ch. 308, cited in Subsection (3)(f), enacted Chapter 27a of this title, establishing a procedure for the creation of townships, which was repealed in 1997.

COLLATERAL REFERENCES

Utah Law Review. — Recent Legislative Developments: Municipal Law Amendments, 1997 Utah L. Rev. 1198.

Am. Jur. 2d. — 83 Am. Jur. 2d Zoning and Planning § 23 et seq.

C.J.S. — 101A C.J.S. Zoning and Land Planning § 177 et seq.

17-27-202. Organization and procedures.

(1) A planning commission shall elect a chair from its members as provided by the ordinance establishing the planning commission.

(2) (a) A planning commission may adopt policies and procedures for the conduct of its meetings, the processing of applications, and for any other purposes considered necessary for the functioning of the planning commission.

(b) The legislative body may provide that those policies and procedures be approved by the legislative body before taking effect.

History: C. 1953, 17-27-202, enacted by L. 1991, ch. 235, § 62; 1995, ch. 179, § 11; 1995, ch. 225, § 3.

Amendment Notes. — The 1995 amendment by ch. 225, effective March 18, 1995, substituted "chair" for "chairperson" and made other stylistic changes throughout the section.

The 1995 amendment by ch. 179, effective May 1, 1995, deleted former Subsections (1)(b) and (1)(c), relating to the term of the chairperson and creation of other necessary offices, and made a related redesignation.

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

17-27-203. Use of state data.

(1) A planning commission may obtain access to and use any data and information held by the state or any of its agencies:

(a) that is classified "public"; and

(b) that is classified "protected" if the planning commission's use of the data is lawfully authorized or if the data will be used for a purpose similar to the purpose for which it was gathered.

(2) Each state official, department, and agency shall:

(a) make any data and information requested by the planning commission available if authorized under the requirements of this section; and

(b) furnish any other technical assistance and advice that they have available to planning commissions without additional cost to the county.

History: C. 1953, 17-27-203, enacted by L. 1991, ch. 235, § 63; 1995, ch. 225, § 4.

Amendment Notes. — The 1995 amendment, effective March 18, 1995, substituted "A" for "The" at the beginning of the section.

17-27-204. Powers and duties.

(1) Each countywide or township planning commission shall, with respect to the county or township, as the case may be:

(a) prepare and recommend a general plan and amendments to the general plan to the county legislative body as provided in this chapter;

(b) recommend zoning ordinances and maps, and amendments to zoning ordinances and maps, to the county legislative body as provided in this chapter;

(c) administer provisions of the zoning ordinance, if specifically provided for in the zoning ordinance adopted by the county legislative body;

(d) recommend subdivision regulations and amendments to those regulations to the county legislative body as provided in this chapter;

(e) recommend approval or denial of subdivision applications as provided in this chapter;

(f) advise the county legislative body on matters as the county legislative body directs;

(g) hear or decide any matters that the county legislative body designates, including the approval or denial of, or recommendations to approve or deny, conditional use permits;

(h) exercise any other powers delegated to it by the county legislative body; and

(i) exercise any other powers that are necessary to enable it to perform its functions.

(2) The planning commission of a township under this part may recommend to the legislative body of the county in which the township is located:

(a) that the county legislative body support or oppose a proposed incorporation of an area located within the township, as provided in Subsection 10-2-105(4); or

(b) that the county legislative body file a protest to a proposed annexation of an area located within the township, as provided in Subsection 10-2-407(1)(b).

History: C. 1953, 17-27-204, enacted by L. 1991, ch. 235, § 64; 1995, ch. 225, § 5; 1997, ch. 389, § 55; 1997 (2nd S.S.), ch. 3, § 14.

Amendment Notes. — The 1995 amendment, effective March 18, 1995, designated the existing provisions as Subsection (1), making related internal designation changes; substituted "A countywide planning commission" for "The planning commission" at the beginning of Subsection (1); and added Subsection (2).

The 1997 amendment, effective May 5, 1997, rewrote the section.

The 1997 (2nd S.S.) amendment, effective July 17, 1997, redesignated the former introductory paragraph as Subsection (1), redesignating the following subsections accordingly and added Subsection (2).

17-27-205. Entrance upon land.

A planning commission or its authorized agents may enter upon any land at reasonable times to make examinations and surveys.

History: C. 1953, 17-27-205, enacted by L. 1991, ch. 235, § 65; 1992, ch. 23, § 28; 1995, ch. 225, § 6.

Amendment Notes. — The 1995 amendment, effective March 18, 1995, substituted "A" for "The" at the beginning of the section.

17-27-206. Planning and zoning board dissolved.

Except as provided in Subsection 17-27-201(3)(f), the planning and zoning board of each township formed before May 5, 1997, under Chapter 308, Laws of Utah 1996, is dissolved.

History: C. 1953, 17-27-206, enacted by L. 1997, ch. 389, § 56; 1997 (2nd S.S.), ch. 3, § 15.

Amendment Notes. — The 1997 (2nd S.S.) amendment, effective July 17, 1997, deleted former Subsection (1) which dissolved townships formed before May 5, 1997, except for those reconstituted or established under Subsection 17-27-200.5(1)(c) and made a related change.

Compiler's Notes. — Laws 1996, ch. 308, cited in this section, enacted Chapter 27a of this title, establishing a procedure for the creation of townships, which was repealed in 1997.

Effective Dates. — Laws 1997, ch. 389 became effective on May 5, 1997, pursuant to Utah Const., Art. VI, Sec. 25.

PART 3

GENERAL PLAN

17-27-301. General plan.

(1) In order to accomplish the purposes set forth in this chapter, each county shall prepare and adopt a comprehensive general plan for:

(a) the present and future needs of the county; and

(b) the growth and development of the land within the county or any part of the county, including uses of land for urbanization, trade, industry, residential, agricultural, wildlife habitat, and other purposes.

(2) The plan may provide for:

(a) health, general welfare, safety, energy conservation, transportation, prosperity, civic activities, aesthetics, and recreational, educational, and cultural opportunities;

(b) the reduction of the waste of physical, financial, or human resources that result from either excessive congestion or excessive scattering of population;

(c) the efficient and economical use, conservation, and production of the supply of:

(i) food and water; and

(ii) drainage, sanitary, and other facilities and resources;

(d) the use of energy conservation and solar and renewable energy resources;

(e) the protection of urban development; and

(f) the protection and promotion of air quality.

(3) The plan may define the county's local customs, local culture, and the components necessary for the county's economic stability.

(4) The county may determine the comprehensiveness, extent, and format of the general plan.

History: C. 1953, 17-27-301, enacted by L. 1991, ch. 235, § 60; 1992, ch. 23, § 29; 1992, ch. 93, § 5; 1994, ch. 257, § 1.

NOTES TO DECISIONS

Ordinance before plan.
A county planning commission has authority to pass a valid zoning ordinance prior to adoption of a master plan. Gayland v. Salt Lake County, 11 Utah 2d 307, 358 P.2d 633 (1961) (decided under former chapter).

COLLATERAL REFERENCES

Am. Jur. 2d. — 82 Am. Jur. 2d Zoning and Planning §§ 69 to 78.

C.J.S. — 101A C.J.S. Zoning and Land Planning § 139.

17-27-302. Plan preparation.

(1) (a) The planning commission shall make and recommend to the legislative body a proposed general plan for the area within the county.

(b) (i) The plan may include planning for incorporated areas if, in the planning commission's judgment, they are related to the planning of the unincorporated territory or of the county as a whole.

(ii) Elements of the county plan that address incorporated areas are not an official plan or part of a municipal plan for any municipality, unless it is adopted by the municipal planning commission and the governing body of the municipality.

(2) The general plan, with the accompanying maps, plats, charts and descriptive and explanatory matter, shall show the planning commission's recommendations for the development of the territory covered by the plan, and may include, among other things:

(a) a land use element that:

(i) designates the proposed general distribution and location and extent of uses of land for housing, business, industry, agriculture, recreation, education, public buildings and grounds, open space, and other categories of public and private uses of land as appropriate; and

(ii) may include a statement of the standards of population density and building intensity recommended for the various land use categories covered by the plan;

(b) a transportation and circulation element consisting of the general location and extent of existing and proposed freeways, arterial and collector streets, mass transit, and any other modes of transportation that are appropriate, all correlated with the land use element of the plan;

(c) an environmental element that addresses:

(i) the protection, conservation, development, and use of natural resources, including the quality of air, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources; and

(ii) the reclamation of land, flood control, prevention and control of the pollution of streams and other waters, regulation of the use of land on hillsides, stream channels and other environmentally sensitive areas, the prevention, control, and correction of the erosion of soils, protection of watersheds and wetlands, and the mapping of known geologic hazards;

(d) a public services and facilities element showing general plans for sewage, waste disposal, drainage, local utilities, rights-of-way, easements, and facilities for them, police and fire protection, and other public services;

(e) a rehabilitation, redevelopment, and conservation element consisting of plans and programs for:

(i) historic preservation; and

(ii) the elimination of blight and for redevelopment, including housing sites, business and industrial sites, and public building sites;

(f) an economic element composed of appropriate studies and an economic development plan that may include review of county revenue and expenditures, revenue sources, identification of base and residentiary industry, primary and secondary market areas, employment, and retail sales activity;

(g) recommendations for implementing the plan, including the use of zoning ordinances, subdivision ordinances, capital improvement plans, and other appropriate actions; and

(h) any other elements that the county considers appropriate.

History: C. 1953, 17-27-302, enacted by L. 1991, ch. 235, § 67; 1992, ch. 23, § 30; 1992, ch. 93, § 6.

NOTES TO DECISIONS

Reclassification.

Reclassification of property of floral company, situated on "Agricultural Zone A-1" land and surrounded by residential and agricultural property, to "C-2" and "R-M" zones, permitting the erection of multifamily dwellings, was not "spot zoning" because it was compatible with the existing master plan and therefore not arbitrary, capricious, or an abuse of the zoning authority's discretion. Crestview-Holladay Homeowners Ass'n v. Engh Floral Co., 545 P.2d 1150 (Utah 1976).

17-27-303. Plan adoption.

(1) (a) After completing a proposed general plan for all or part of the area within the county, the planning commission shall schedule and hold a public hearing on the proposed plan.

(b) The planning commission shall provide reasonable notice of the public hearing at least 14 days before the date of the hearing.

(c) After the public hearing, the planning commission may make changes to the proposed general plan.

(2) The planning commission shall then forward the proposed general plan to the legislative body.

(3) (a) The legislative body shall hold a public hearing on the proposed general plan recommended to it by the planning commission.

(b) The legislative body shall provide reasonable notice of the public hearing at least 14 days before the date of the hearing.

(4) After the public hearing, the legislative body may make any modifications to the proposed general plan that it considers appropriate.

(5) The legislative body may:

(a) adopt the proposed general plan without amendment;

(b) amend the proposed general plan and adopt or reject it as amended; or

(c) reject the proposed general plan.

(6) (a) The general plan is an advisory guide for land use decisions.

(b) The legislative body may adopt an ordinance mandating compliance with the general plan.

History: C. 1953, 17-27-303, enacted by L. 1991, ch. 235, § 68; 1992, ch. 23, § 31.

Cross-References. — Reasonable notice § 17-27-103.

COLLATERAL REFERENCES

A.L.R. — Disqualification for interest or bias of administrative officer sitting in zoning proceeding, 10 A.L.R.3d 694.

Right to cross-examination of witnesses in hearings before administrative zoning authority, 27 A.L.R.3d 1304.

17-27-304. Amendment of plan.

The legislative body may amend the general plan by following the procedures required by Section 17-27-303.

History: C. 1953, 17-27-304, enacted by L. 1991, ch. 235, § 69.

17-27-305. Effect of the plan on public uses.

(1) After the legislative body has adopted a general plan or any amendments to the general plan, no street, park, or other public way, ground, place, or space, no publicly owned building or structure, and no public utility, whether publicly or privately owned, may be constructed or authorized until and unless:

(a) it conforms to the plan; or

(b) it has been considered by the planning commission and, after receiving the advice of the planning commission, approved by the legislative body as an amendment to the general plan.

(2) (a) Before accepting, widening, removing, extending, relocating, narrowing, vacating, abandoning, changing the use, acquiring land for, or selling or leasing any street or other public way, ground, place, property, or structure, the legislative body shall submit the proposal to the planning commission for its review and recommendations.

(b) If the legislative body approves any of the items contained in Subsection (a), it shall also amend the general plan.

History: C. 1953, 17-27-305, enacted by L. 1991, ch. 235, § 70; 1995, ch. 179, § 12.

Amendment Notes. — The 1995 amendment, effective May 1, 1995, designated the former first paragraph and Subsections (1) and (2) as Subsections (1), (1)(a), and (1)(b), respectively, and added Subsection (2).

17-27-306. Effect of official maps.

(1) Counties may not adopt an official map under this chapter.

(2) (a) An official map adopted under the previous enabling statute does not:

(i) require a landowner to dedicate and construct a street as a condition of development approval, except under circumstances provided in Subsection (b)(iii); or

(ii) require a county to immediately acquire property it has designated for eventual use as a public street.

(b) This section does not prohibit a county from:

(i) requiring a landowner to take into account the proposed streets in the planning of a development proposal;

(ii) acquiring the property through purchase, gift, voluntary dedication, or eminent domain; or

(iii) requiring the dedication and improvement of a street if the street is found necessary by the county because of a proposed development.

(3) An official map may not be used to unconstitutionally prohibit the development of property designated for eventual use as a public street.

History: C. 1953, 17-27-306, enacted by L. 1992, ch. 23, § 32.

17-27-307. Plans for moderate income housing.

(1) The availability of moderate income housing is an issue of statewide concern. To this end:

(a) counties should afford a reasonable opportunity for a variety of housing, including moderate income housing, to meet the needs of people desiring to live there; and

(b) moderate income housing should be located in all areas of a community to allow persons with moderate incomes to benefit from and to fully participate in all aspects of neighborhood and community life.

(2) As used in this section:

(a) "Moderate income housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income of the county statistical area for households of the same size.

(b) "Plan for moderate income housing" or "plan" means a written document adopted by a county legislative body that includes, but is not limited to:

(i) an estimate of the existing supply of moderate income housing located within the county;

(ii) an estimate of the need for moderate income housing in that county for the next five years as revised annually;

(iii) a survey of total residential zoning;

(iv) an evaluation of how existing zoning densities affect opportunities for moderate income housing; and

(v) a description of the county's program to encourage an adequate supply of moderate income housing.

(3) Before December 31, 1998, each county legislative body shall, as part of its general plan, adopt a plan for moderate income housing within the unincorporated areas of that county.

(4) A plan may provide for moderate income housing by any means or combination of techniques which provide a realistic opportunity to meet estimated needs. The plan may include an analysis of why the means or techniques selected provide a realistic opportunity to meet the objectives of this section. Such techniques may include:

(a) rezoning for densities necessary to assure the economic viability of inclusionary developments, either through mandatory set asides or density bonuses;

(b) infrastructure expansion and rehabilitation that will facilitate the construction of moderate income housing;

(c) rehabilitation of existing uninhabitable housing stock;

(d) consideration of waiving construction related fees generally imposed by the county;

(e) utilization of state or federal funds or tax incentives to promote the construction of moderate income housing;

(f) utilization of programs offered by the Utah Housing Finance Agency within that agency's funding capacity; and

(g) utilization of affordable housing programs administered by the Department of Community and Economic Development.

(5) (a) After adoption of a plan for moderate income housing under Subsection (3), the legislative body of each county with a population over 25,000 shall annually:

(i) review the plan and its implementation; and

(ii) prepare a report setting forth the findings of the review.

(b) Each report under Subsection (5)(a)(ii) shall include a description of:

(i) efforts made by the county to reduce, mitigate, or eliminate local regulatory barriers to moderate income housing;

(ii) actions taken by the county to encourage preservation of existing moderate income housing and development of new moderate income housing;

(iii) progress made within the county to provide moderate income housing, as measured by permits issued for new units of moderate income housing; and

(iv) efforts made by the county to coordinate moderate income housing plans and actions with neighboring counties.

(c) The legislative body of each county with a population over 25,000 shall send a copy of the report under Subsection (5)(a)(ii) to the Department of Community and Economic Development and the association of governments in which the county is located.

History: C. 1953, 17-27-307, enacted by L. 1996, ch. 316, § 3; 1998, ch. 117, § 3.

Amendment Notes. — The 1998 amendment, effective May 4, 1998, substituted "legislative body" for "governing body" in Subsection (2)(b); substituted "legislative body" for "governing board" in Subsection (3); and added Subsection (5).

Effective Dates. — Laws 1996, ch. 316, § 7 makes this section effective on July 1, 1996.

PART 4

ZONING ORDINANCE

17-27-401. General powers.

The legislative body may enact a zoning ordinance establishing regulations for land use and development that furthers the intent of this chapter.

History: C. 1953, 17-27-401, enacted by L. 1991, ch. 235, § 71.

NOTES TO DECISIONS

ANALYSIS

Challenges to ordinances.
Ordinance before plan.
Retrospective effect of ordinance.
Zoning power in general.

Challenges to ordinances.

Whether the reason for delay is laches, estoppel, waiver, or public policy, challenges claiming procedural invalidity of a zoning ordinance and constitutional challenges based thereon must be brought within a reasonable time from enactment of the ordinance. If challenge is not brought in a timely manner, a plaintiff will be barred from challenging a zoning ordinance. Thatcher Enters. v. Cache County Corp., 902 F.2d 1472 (10th Cir. 1990) (decided under former chapter).

Ordinance before plan.

A county planning commission had authority under former provisions to pass a valid zoning ordinance prior to adoption of a master plan. Gayland v. Salt Lake County, 11 Utah 2d 307, 358 P.2d 633 (1961).

Retrospective effect of ordinance.

Zoning ordinance would not apply retrospectively to deny a use permit to the owner of unzoned property who did everything required of him under the existing laws. Contracia Funding & Mtg. Exch. v. Maynes, 527 P.2d 1073 (Utah 1974).

Zoning power in general.

Courts would not permit a violation of a clear mandate of zoning authorities, on the basis of reliance on advice of counsel, or on the basis of hardship due to compliance, or on the basis that it was not shown that anyone else would suffer in perpetuating the status quo, since to do so would open the door for indiscriminate abuse of zoning regulations. Salt Lake County v. Hutchinson, 8 Utah 2d 154, 329 P.2d 657 (1958).

Exercise of zoning power is a legislative function to be exercised by the legislative bodies of municipalities; the wisdom of a zoning plan, its necessity, and the nature and boundaries of the zoned district are all matters within the legislative discretion, and the Supreme Court will avoid substituting its judgment for that of the zoning authority. Crestview-Holladay Homeowners Ass'n v. Engh Floral Co., 545 P.2d 1150 (Utah 1976).

COLLATERAL REFERENCES

C.J.S. — 101A C.J.S. Zoning and Land Planning § 38 et seq.

A.L.R. — Validity of zoning laws setting minimum lot size requirements, 1 A.L.R.5th 622.

Construction and application of zoning laws setting minimum lot size requirements, 2 A.L.R.5th 553.

17-27-402. Preparation and adoption.

(1) The planning commission shall prepare and recommend to the legislative body a proposed zoning ordinance, including both the full text of the zoning ordinance and maps, that represents the commission's recommendations for zoning all or any part of the area within the county.

(2) (a) The legislative body shall hold a public hearing on the proposed zoning ordinance recommended to it by the planning commission.

(b) The legislative body shall provide reasonable notice of the public hearing at least 14 days before the date of the hearing.

(3) After the public hearing, the legislative body may:

(a) adopt the zoning ordinance as proposed;

(b) amend the zoning ordinance and adopt or reject the zoning ordinance as amended; or

(c) reject the ordinance.

History: C. 1953, 17-27-402, enacted by L. 1991, ch. 235, § 72; 1992, ch. 23, § 33.

Cross-References. — Reasonable notice, § 17-27-103.

17-27-403. Amendments and rezonings.

(1) (a) The legislative body may amend:

(i) the number, shape, boundaries, or area of any zoning district;

(ii) any regulation of or within the zoning district; or

(iii) any other provision of the zoning ordinance.

(b) The legislative body may not make any amendment authorized by this subsection unless the amendment was proposed by the planning commission or is first submitted to the planning commission for its approval, disapproval, or recommendations.

(2) The legislative body shall comply with the procedure specified in Section 17-27-402 in preparing and adopting an amendment to the zoning ordinance or the zoning map.

History: C. 1953, 17-27-403, enacted by L. 1991, ch. 235, § 73.

NOTES TO DECISIONS

Amendments.

Unzoned land cannot be initially zoned by amendment. Melville v. Salt Lake County, 536 P.2d 133 (Utah 1975) (decided under former chapter).

COLLATERAL REFERENCES

Utah Law Review. — Comment, *Melville v. Salt Lake County* — Technical Notice: A Judicial Lesson in Avoiding Inevitable Conflicts, 1975 Utah L. Rev. 520.

17-27-404. Temporary regulations.

(1) (a) A county legislative body may, without a public hearing, enact an ordinance establishing a temporary zoning regulation for any part or all of the area within the county if:

(i) the legislative body makes a finding of compelling, countervailing public interest; or

(ii) the area is unzoned.

(b) A temporary zoning regulation under Subsection (1)(a) may prohibit, restrict, or regulate the erection, construction, reconstruction, or alteration of any building or structure or subdivision approval.

(c) A temporary zoning regulation under Subsection (1)(a) may not impose an impact fee or other financial requirement on building or development.

(2) The county legislative body shall establish a period of limited effect for the temporary ordinance not to exceed six months.

(3) (a) A county legislative body may, without a public hearing, enact an ordinance establishing a temporary zoning regulation prohibiting construction, subdivision approval, and other development activities within an area that is the subject of an Environmental Impact Statement or a Major Investment Study examining the area as a proposed highway or transportation corridor.

(b) A zoning regulation under Subsection (3)(a):

(i) may not exceed six months in duration;

(ii) may be renewed, if requested by the Utah Transportation Commission created under Section 72-1-301, for up to two additional six-month periods by ordinance enacted before the expiration of the previous zoning regulation; and

(iii) notwithstanding Subsections (3)(b)(i) and (ii), is effective only as long as the Environmental Impact Statement or Major Investment Study is in progress.

History: C. 1953, 17-27-404, enacted by L. 1991, ch. 235, § 74; 1992, ch. 23, § 34; 1997, ch. 171, § 2; 1998, ch. 270, § 4.

Amendment Notes. — The 1997 amendment, effective May 5, 1997, inserted "county" before "legislative body" and made stylistic changes in Subsections (1) and (2) and added Subsections (1)(c) and (3).

The 1998 amendment, effective March 21, 1998, substituted "Section 72-1-301" for "Section 63-49-10" in Subsection (3)(b)(ii).

COLLATERAL REFERENCES

A.L.R. — Validity and effect of "interim" zoning ordinance, 30 A.L.R.3d 1196.

17-27-405. Zoning districts.

(1) (a) The legislative body may divide the territory over which it has jurisdiction into zoning districts of a number, shape, and area that it considers appropriate to carry out the purposes of this chapter.

(b) Within those zoning districts, the legislative body may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, and the use of land.

(2) The legislative body shall ensure that the regulations are uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

History: C. 1953, 17-27-405, enacted by L. 1991, ch. 235, § 75.

17-27-406. Conditional uses.

A zoning ordinance may contain provisions for conditional uses that may be allowed, allowed with conditions, or denied in designated zoning districts, based on compliance with standards and criteria set forth in the zoning ordinance for those uses.

History: C. 1953, 17-27-406, enacted by L. 1991, ch. 235, § 76.

17-27-407. Nonconforming uses and structures.

(1) (a) Except as provided in this section, a nonconforming use or structure may be continued.

(b) A nonconforming use may be extended through the same building, provided no structural alteration of the building is proposed or made for the purpose of the extension.

(c) For purposes of this subsection, the addition of a solar energy device to a building is not a structural alteration.

(d) If any county acquires title to any property because of tax delinquency and the property is not redeemed as provided by law, the future use of the property shall conform with the existing provisions of the county ordinances equally applicable to other like properties within the district in which the property acquired by the county is located.

(2) The legislative body may provide in any zoning ordinance or amendment for:

(a) the establishment, restoration, reconstruction, extension, alteration, expansion, or substitution of nonconforming uses upon the terms and conditions set forth in the zoning ordinance;

(b) the termination of all nonconforming uses, except billboards by providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of his investment in the nonconforming use, if any; and

(c) the termination of a billboard that is a nonconforming use by acquiring the billboard and associated property rights through:

(i) gift;

(ii) purchase;

(iii) agreement;

(iv) exchange; or

(v) eminent domain.

(3) If a county prevents a billboard company from maintaining, repairing, or restoring a billboard structure damaged by casualty, act of God, or vandalism, the county's actions constitute initiation of acquisition by eminent domain under Subsection (2)(c)(v).

(4) Notwithstanding Subsections (2) and (3), a legislative body may remove a billboard without providing compensation if, after providing the owner with reasonable notice of proceedings and an opportunity for a hearing, the legislative body finds that:

(a) the applicant for a permit made a false or misleading statement in his application;

(b) the billboard is unsafe;

(c) the billboard is in an unreasonable state of repair; or

(d) the billboard has been abandoned for at least 12 months.

(5) A county may terminate the nonconforming status of school district property when the property ceases to be used for school district purposes.

History: C. 1953, 17-27-407, enacted by L. 1991, ch. 235, § 77; 1992, ch. 23, § 35; 1993, ch. 286, § 2; 1994, ch. 12, § 12.

NOTES TO DECISIONS

ANALYSIS

Effect of ordinance on nonconforming use.
Estoppel to enforce zoning ordinance.

Effect of ordinance on nonconforming use.

Where there was a protracted period of unexplained vacancy and no showing of any nonconforming use of residential property for a period of years, an ordinance against nonconforming use in the event of discontinuance of such use for one year precluded the issuance of a building permit for a gasoline filling station. Morrison v. Horne, 12 Utah 2d 131, 363 P.2d 1113 (1961).

Estoppel to enforce zoning ordinance.

County assessor's erroneous description of property as commercial instead of residential did not preclude zoning authorities from denying a permit for the construction of a service

station on a nonconforming use basis. Morrison v. Horne, 12 Utah 2d 131, 363 P.2d 1113 (1961).

COLLATERAL REFERENCES

Am. Jur. 2d. — 83 Am. Jur. 2d Zoning § 624 et seq.

A.L.R. — Change in area or location of nonconforming use as violation of zoning ordinance, 56 A.L.R.4th 769.

Addition of another activity to existing nonconforming use as violation of zoning ordinance, 61 A.L.R.4th 724.

Change in volume, intensity, or means of performing nonconforming use as violation of zoning ordinance, 61 A.L.R.4th 806.

Change in type of activity of nonconforming use as violation of zoning ordinance, A.L.R.4th 902.

Alteration, extension, reconstruction, or repair of nonconforming structure or structure devoted to nonconforming use as violation of zoning ordinance, 63 A.L.R.4th 275.

Validity of provisions for amortization of nonconforming uses, 8 A.L.R.5th 391.

17-27-408. Existing outdoor advertising uses.

(1) A county may only require termination of a billboard and associated property rights through:

(a) gift;

(b) purchase;

(c) agreement;

(d) exchange; or

(e) eminent domain.

(2) A termination under Subsection (1)(a), (b), (c), or (d) requires the voluntary consent of the billboard owner.

History: C. 1953, 17-27-409, enacted by L. 1997, ch. 263, § 2; recompiled as § 17-27-408.

Compiler's Notes. — This section was enacted as § 17-27-409; it was renumbered by the Office of Legislative Research and General Counsel to keep the section numbers in this part consecutive.

Effective Dates. — Laws 1997, ch. 263, became effective on May 5, 1997, pursuant to Utah Const., Art. VI, Sec. 25.

PART 5

RESIDENTIAL FACILITIES FOR ELDERLY

17-27-501. Residential facilities for elderly persons.

(1) (a) A residential facility for elderly persons may not operate as a business.

(b) A residential facility for elderly persons shall:

(i) be owned by one of the residents or by an immediate family member of one of the residents or be a facility for which the title has been placed in trust for a resident;

(ii) be consistent with existing zoning of the desired location; and

(iii) be occupied on a 24-hour-per-day basis by eight or fewer elderly persons in a family-type arrangement.

(2) A residential facility for elderly persons may not be considered a business because a fee is charged for food or for actual and necessary costs of operation and maintenance of the facility.

History: C. 1953, 17-27-501, enacted by L. 1991, ch. 235, § 78; 1992, ch. 23, § 36.

Cross-References. — Services to the aging, Title 62A, Chapter 3.

17-27-502. County ordinances governing elderly residential facilities.

(1) Each county shall adopt ordinances that establish that a residential facility for elderly persons is a permitted use in any area where residential dwellings are allowed, except an area zoned to permit exclusively single-family dwellings.

(2) The ordinances shall establish a permit process that may require only that:

(a) the facility meet all applicable building, safety, zoning, and health ordinances applicable to similar dwellings;

(b) adequate off-street parking space be provided;

(c) the facility be capable of use as a residential facility for elderly persons without structural or landscaping alterations that would change the structure's residential character;

(d) residential facilities for elderly persons be reasonably dispersed throughout the county;

(e) no person being treated for alcoholism or drug abuse be placed in a residential facility for elderly persons; and

(f) placement in a residential facility for elderly persons be on a strictly voluntary basis and not a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional facility.

History: C. 1953, 17-27-502, enacted by L. 1991, ch. 235, § 79; 1997, ch. 108, § 6; 1999, ch. 140, § 3.

Amendment Notes. — The 1997 amendment, effective May 5, 1997, in Subsection (2)(d) substituted "persons with a disability" for "handicapped persons" and substituted "17-27-605" for "17-27-103."

The 1999 amendment, effective May 3, 1999, rewrote Subsection (2)(d).

17-27-503. County approval of elderly residential facilities.

(1) (a) Upon application for a permit to establish a residential facility for elderly persons in any area where residential dwellings are allowed, except an area zoned to permit exclusively single-family dwellings, the county may decide only whether or not the residential facility for elderly persons conforms to ordinances adopted by the county under this part.

(b) If the county determines that the residential facility for elderly persons complies with the ordinances, it shall grant the requested permit to that facility.

(2) The use granted and permitted by this section is nontransferable and terminates if the structure is devoted to a use other than a residential facility for elderly persons or if the structure fails to comply with the ordinances adopted under this part.

(3) If a county has not adopted ordinances under this part at the time an application for a permit to establish a residential facility for elderly persons is made, the county shall grant the permit if it is established that the criteria set forth in this part have been met by the facility.

History: C. 1953, 17-27-503, enacted by L. 1991, ch. 235, § 80.

17-27-504. Elderly residential facilities in areas zoned exclusively for single-family dwellings.

(1) For purposes of this section:

(a) no person who is being treated for alcoholism or drug abuse may be placed in a residential facility for elderly persons; and

(b) placement in a residential facility for elderly persons shall be on a strictly voluntary basis and may not be a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional institution.

(2) Subject to the granting of a conditional use permit, a residential facility for elderly persons shall be allowed in any county zoning district that is zoned to permit exclusively single-family dwelling use, if that facility:

(a) conforms to all applicable health, safety, zoning, and building codes;

(b) is capable of use as a residential facility for elderly persons without structural or landscaping alterations that would change the structure's residential character; and

(c) conforms to the county's criteria, adopted by ordinance, governing the location of residential facilities for elderly persons in areas zoned to permit exclusively single-family dwellings.

(3) A county may, by ordinance, provide that no residential facility for elderly persons be established within three-quarters mile of another existing residential facility for elderly persons or residential facility for persons with a disability, as defined by Section 17-27-605.

(4) The use granted and permitted by this section is nontransferable and terminates if the structure is devoted to a use other than as a residential facility for elderly persons or if the structure fails to comply with applicable health, safety, and building codes.

(5) (a) County ordinances shall prohibit discrimination against elderly persons and against residential facilities for elderly persons.

(b) The decision of a county regarding the application for a permit by a residential facility for elderly persons must be based on legitimate land use criteria and may not be based on the age of the facility's residents.

(6) The requirements of this section that a residential facility for elderly persons obtain a conditional use permit or other permit do not apply if the facility meets the requirements of existing zoning ordinances that allow a specified number of unrelated persons to live together.

History: C. 1953, 17-27-504, enacted by L. 1991, ch. 235, § 81; 1997, ch. 108, § 7.

Amendment Notes. — The 1997 amendment, effective May 5, 1997, in Subsection (3) substituted "persons with a disability" for "handicapped persons" and substituted "17-27-605" for "17-27-103."

PART 6

RESIDENTIAL FACILITIES FOR PERSONS WITH A DISABILITY

17-27-601 to 17-27-604. Repealed.

Repeals. — Laws 1997, ch. 108, § 11 repeals §§ 17-27-601 to 17-27-604, as enacted by Laws 1991, ch. 235, §§ 82 to 85, concerning residential facilities for handicapped persons and county ordinances. For present provisions, see § 17-27-605.

17-27-605. Residences for persons with a disability.

(1) As used in this section:

(a) "Disability" is defined in Section 57-21-2.

(b) "Residential facility for persons with a disability" means a residence:

(i) in which more than one person with a disability resides; and

(ii) (A) is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or

(B) is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(2) Each county shall adopt an ordinance for residential facilities for persons with a disability. The ordinance:

(a) shall comply with Title 57, Chapter 21, Utah Fair Housing Act, and the federal Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq.;

(b) may require, if consistent with Subsection (2)(a), residential facilities for persons with a disability to be reasonably dispersed throughout the county; and

(c) shall provide that a residential facility for persons with a disability:

(i) is a permitted use in any zoning area where residential dwellings are allowed; and

(ii) may only be required to obtain permits that verify compliance with the building, safety, and health regulations that are applicable to similar structures.

(3) The responsibility to license programs or entities that operate facilities for persons with a disability, as well as to require and monitor the provision of adequate services to persons residing in those facilities, shall rest with:

(a) for programs or entities licensed or certified by the Department of Human Services, the Department of Human Services as provided in Title 62A, Chapter 5, Services to People with Disabilities; and

(b) for programs or entities licensed or certified by the Department of Health, the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

History: C. 1953, 17-27-605, enacted by L. 1997, ch. 108, § 8; 1999, ch. 21, § 11; 1999, ch. 140, § 4.

Amendment Notes. — The 1999 amendment by ch. 21, effective May 3, 1999, deleted "Section 62A-2-114 and" before "Title 62A" in Subsection (3).

The 1999 amendment by ch. 140, effective May 3, 1999, added Subsection (1)(b)(ii)(B) and the Subsection (1)(b)(ii)(A) designation; divided

Subsection (3), adding the Subsection (3)(a) designation; added "for programs or entities licensed or certified by the Department of Human Services" in Subsection (3)(a); added Subsection (3)(b); and made related and stylistic changes.

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

Effective Dates. — Laws 1997, ch. 108 became effective on May 5, 1997, pursuant to Utah Const., Art. VI, Sec. 25.

PART 7

BOARD OF ADJUSTMENT

17-27-701. Board of adjustment — Appointment — Term — Vacancy.

(1) In order to provide for just and fair treatment in the administration of local zoning ordinances, and to ensure that substantial justice is done, each county adopting a zoning ordinance shall appoint a board of adjustment to exercise the powers and duties provided in this part.

(2) (a) The board of adjustment shall consist of five members and whatever alternate members that the chief executive officer considers appropriate.

(b) The legislative body shall establish the terms for members of the board of adjustment by ordinance.

(c) The chief executive officer shall appoint the members and alternate members with the advice and consent of the legislative body.

(d) The chief executive officer shall appoint members of the first board of adjustment to terms so that the term of one member expires each year.

(3) (a) No more than two alternate members may sit at any meeting of the board of adjustment at one time.

(b) The legislative body shall make rules establishing a procedure for alternate members to serve in the absence of members of the board of adjustment.

(4) (a) The chief executive may remove any member of the board of adjustment for cause if written charges are filed against the member with the chief executive.

(b) The chief executive shall provide the member with a public hearing if he requests one.

(5) (a) The chief executive officer with the advice and consent of the legislative body shall fill any vacancy.

(b) The person appointed shall serve for the unexpired term of the member or alternate member whose office is vacant.

History: C. 1953, 17-27-701, enacted by L. 1991, ch. 235, § 86; 1992, ch. 23, § 37; 1995, ch. 179, § 13.

Amendment Notes. — The 1995 amendment, effective May 1, 1995, deleted "three to" before "five" in Subsection (2)(a), deleted former Subsection (2)(a)(ii), relating to changes in the membership of the board, and made a related redesignation.

NOTES TO DECISIONS

Purpose.

Former § 17-27-15, providing for a board of adjustment, was designed to assure speedy appeal to the proper tribunal of the grievance of a party adversely affected by a decision of an administrative agency. Its evident purpose was to assure the expeditious and orderly development of a community. Lund v. Cottonwood Meadows Co., 15 Utah 2d 305, 392 P.2d 40 (1964).

COLLATERAL REFERENCES

C.J.S. — 101A C.J.S. Zoning and Land Planning § 180 et seq.

17-27-702. Organization — Procedures.

(1) The board of adjustment shall:

(a) organize and elect a chairperson; and

(b) adopt rules that comply with any ordinance adopted by the legislative body.

(2) The board of adjustment shall meet at the call of the chairperson and at any other times that the board of adjustment determines.

(3) The chairperson, or in the absence of the chairperson, the acting chairperson, may administer oaths and compel the attendance of witnesses.

(4) (a) All meetings of the board of adjustment shall comply with the requirements of Title 52, Chapter 4, Open and Public Meetings.

(b) The board of adjustment shall:

(i) keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact; and

(ii) keep records of its examinations and other official actions.

(c) The board of adjustment may, but is not required to, have its proceedings contemporaneously transcribed by a court reporter or a tape recorder.

(d) The board of adjustment shall file its records in the office of the board of adjustment.

(e) All records in the office of the board of adjustment are public records.

(5) The concurring vote of at least three members of the board of adjustment is necessary to reverse any order, requirement, decision, or determination of any administrative official or agency or to decide in favor of the appellant.

(6) Decisions of the board of adjustment become effective at the meeting in which the decision is made, unless a different time is designated in the board's rules or at the time the decision is made.

(7) The legislative body may fix per diem compensation for the members of the board of adjustment, based on necessary and reasonable expenses and on meetings actually attended.

History: C. 1953, 17-27-702, enacted by L. 1991, ch. 235, § 87; 1992, ch. 23, § 38; 1995, ch. 179, § 14.

Amendment Notes. — The 1995 amendment, effective May 1, 1995, rewrote Subsection (5), which formerly specified the concurring vote required for five-member and three-member boards.

17-27-703. Powers and duties.

(1) The board of adjustment shall hear and decide:

(a) appeals from zoning decisions applying the zoning ordinance;

(b) special exceptions to the terms of the zoning ordinance; and

(c) variances from the terms of the zoning ordinance.

(2) The board of adjustments may make determinations regarding the existence, expansion, or modification of nonconforming uses if that authority is delegated to them by the legislative body.

(3) If authorized by the legislative body, the board of adjustment may interpret the zoning maps and pass upon disputed questions of lot lines, district boundary lines, or similar questions as they arise in the administration of the zoning regulations.

History: C. 1953, 17-27-703, enacted by L. 1991, ch. 235, § 88; 1992, ch. 23, § 39.

NOTES TO DECISIONS

ANALYSIS

Appeals from zoning decisions.
Illegal zoning.

Appeals from zoning decisions.

This section places no limitations on the authority of the board of adjustment to hear appeals from zoning decisions applying a zoning ordinance; thus, the board had authority to hear an appeal from the decision of a county commission applying a zoning ordinance. Bennion v. Sundance Dev. Corp., 897 P.2d 1232 (Utah Ct. App. 1995).

Illegal zoning.

Where a city was claiming only the illegality of rezoning, not seeking a variance or exception to circumvent some unjust hardship in application of the rezoning, the board of adjustment had no authority to hear the city's claims; the statute limits the powers of the board to hear only alleged errors in zoning enforcement decisions. Sandy City v. Salt Lake County, 827 P.2d 212 (Utah 1992) (decided under former § 17-27-16).

17-27-704. Appeals.

(1) (a) (i) The applicant or any other person or entity adversely affected by a decision administering or interpreting a zoning ordinance may appeal that decision applying the zoning ordinance by alleging that there is error in any order, requirement, decision, or determination made by an official in the administration or interpretation of the zoning ordinance.

(ii) The legislative body shall enact an ordinance establishing a reasonable time for appeal to the board of adjustment of decisions administering or interpreting a zoning ordinance.

(b) Any officer, department, board, or bureau of a county affected by the grant or refusal of a building permit or by any other decisions of the administrative officer in the administration or interpretation of the zoning ordinance may appeal any decision to the board of adjustment.

(2) The person or entity making the appeal has the burden of proving that an error has been made.

(3) (a) Only decisions applying the ordinance may be appealed to the board of adjustment.

(b) A person may not appeal, and the board of adjustment may not consider, any zoning ordinance amendments.

(4) Appeals may not be used to waive or modify the terms or requirements of the zoning ordinance.

History: C. 1953, 17-27-704, enacted by L. 1991, ch. 235, § 89; 1992, ch. 23, § 40; 1995, ch. 179, § 15.

Amendment Notes. — The 1995 amendment, effective May 1, 1995, deleted "zoning" before "decisions" in Subsections (1)(a)(i) and (3)(a) and substituted "board of adjustment" for "board" in Subsection (1)(a)(ii).

NOTES TO DECISIONS

ANALYSIS

Appeal from decision of county commission.
Appeal to county commission.

Appeal from decision of county commission.

The provision of this section referring to the authority of the board of adjustment to hear appeals from decisions "made by an official" did not apply to prevent the board from hearing an appeal from the decision of a county commission; the applicable provision, § 17-27-703, places no limitations on the authority of the board of adjustment to hear appeals from zoning decision applying the zoning ordinance. Bennion v. Sundance Dev. Corp., 897 P.2d 1232 (Utah Ct. App. 1995).

Appeal to county commission.

The board of adjustments is constituted by statute a forum for review of all administrative zoning decisions, but nowhere is it made the exclusive repository of appellate powers; the county commission has authority to place the power to issue special exceptions to general ordinances in the planning commission, and to create a right of appeal directly to the county commission itself. Thurston v. Cache County, 626 P.2d 440 (Utah 1981) (decided under former chapter).

17-27-705. Routine and uncontested matters.

(1) (a) With the consent of the legislative body, the chief executive officer may appoint an administrative officer to decide routine and uncontested matters before the board of adjustment.

(b) The board of adjustment shall:

(i) designate which matters may be decided by the administrative officer; and

(ii) establish guidelines for the administrative officer to comply with in making decisions.

(2) Any person affected by a decision of the hearing officer may appeal the decision to the board of adjustment as provided in this part.

History: C. 1953, 17-27-705, enacted by L. 1991, ch. 235, § 90; 1992, ch. 23, § 41.

17-27-706. Special exceptions.

(1) In enacting the zoning ordinance, the legislative body may:

(a) provide for special exceptions; and

(b) grant jurisdiction to the board of adjustment to hear and decide some or all special exceptions.

(2) The board of adjustment may hear and decide special exceptions only if authorized to do so by the zoning ordinance and based only on the standards contained in the zoning ordinance.

(3) The legislative body may provide that conditional use permits be treated as special exceptions in the zoning ordinance.

History: C. 1953, 17-27-706, enacted by L. 1991, ch. 235, § 91.

NOTES TO DECISIONS

ANALYSIS

Applicability.
Grounds.
Power to issue.

Applicability.

The board's decision to grant a special ex-

emption to two couples to build and operate an airstrip for their private use within a few miles of a private commercial airport was supported by substantial evidence; none of the board's required findings was shown to be arbitrary or capricious, and the decision violated no provision of law. Patterson v. Utah County Bd. of Adjustment, 893 P.2d 602 (Utah Ct. App. 1995).

Grounds.

A proposed special exception will "promote the public health, safety and welfare" if granting the exception will contribute to the orderly development of the county as a whole. Patterson v. Utah County Bd. of Adjustment, 893 P.2d 602 (Utah Ct. App. 1995).

Power to issue.

Former section authorized, but did not require, the county commission to invest the board of adjustment with the power to issue special exceptions to general ordinances; however, county commission had authority to place the power to issue special exceptions in the planning commission, and to create a right of appeal directly to the county commission itself. Thurston v. Cache County, 626 P.2d 440 (Utah 1981).

17-27-707. Variances.

(1) Any person or entity desiring a waiver or modification of the requirements of the zoning ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the board of adjustment for a variance from the terms of the zoning ordinance.

(2) (a) The board of adjustment may grant a variance only if:

(i) literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance;

(ii) there are special circumstances attached to the property that do not generally apply to other properties in the same district;

(iii) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;

(iv) the variance will not substantially affect the general plan and will not be contrary to the public interest; and

(v) the spirit of the zoning ordinance is observed and substantial justice done.

(b) (i) In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under Subsection (2)(a), the board of adjustment may not find an unreasonable hardship unless the alleged hardship:

(A) is located on or associated with the property for which the variance is sought; and

(B) comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

(ii) In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under Subsection (2)(a), the board of adjustment may not find an unreasonable hardship if the hardship is self-imposed or economic.

(c) In determining whether or not there are special circumstances attached to the property under Subsection (2)(a), the board of adjustment may find that special circumstances exist only if the special circumstances:

(i) relate to the hardship complained of; and

(ii) deprive the property of privileges granted to other properties in the same district.

(3) The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

(4) Variances run with the land.

(5) The board of adjustment and any other body may not grant use variances.

(6) In granting a variance, the board of adjustment may impose additional requirements on the applicant that will:

(a) mitigate any harmful affects of the variance; or

(b) serve the purpose of the standard or requirement that is waived or modified.

History: C. 1953, 17-27-707, enacted by L. 1991, ch. 235, § 92; 1992, ch. 23, § 42; 1995, ch. 179, § 16.

Amendment Notes. — The 1995 amendment, effective May 1, 1995, deleted "Except as provided in Subsection (3)" from the beginning of Subsection (2)(a).

COLLATERAL REFERENCES

A.L.R. — Construction and application of statute or ordinance requiring notice as prerequisite to granting variance or exception to zoning requirement, 38 A.L.R.3d 167.

Comprehensive plan, requirement that zoning variances or exceptions be made in accordance with, 40 A.L.R.3d 372.

17-27-708. District court review of board of adjustment decision.

(1) Any person adversely affected by any decision of a board of adjustment may petition the district court for a review of the decision.

(2) In the petition, the plaintiff may only allege that the board of adjustment's decision was arbitrary, capricious, or illegal.

(3) (a) The petition is barred unless it is filed within 30 days after the board of adjustment's decision is final.

(b) (i) The time under Subsection (3)(a) to file a petition is tolled from the date a property owner files a request for arbitration of a constitutional taking issue with the private property ombudsman under Section 63-34-13 until 30 days after:

(A) the arbitrator issues a final award; or

(B) the private property ombudsman issues a written statement under Subsection 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

(ii) A tolling under Subsection (3)(b)(i) operates only as to the specific constitutional taking issues that are the subject of the request for arbitration filed with the private property ombudsman by a property owner.

(iii) A request for arbitration filed with the private property ombudsman after the time under Subsection (3)(a) to file a petition has expired does not affect the time to file a petition.

(4) (a) The board of adjustment shall transmit to the reviewing court the record of its proceedings including its minutes, findings, orders and, if available, a true and correct transcript of its proceedings.

(b) If the proceeding was tape recorded, a transcript of that tape recording is a true and correct transcript for purposes of this subsection.

(5) (a) (i) If there is a record, the district court's review is limited to the record provided by the board of adjustment.

(ii) The court may not accept or consider any evidence outside the board of adjustment's record unless that evidence was offered to the board of adjustment and the court determines that it was improperly excluded by the board of adjustment.

(b) If there is no record, the court may call witnesses and take evidence.

(6) The court shall affirm the decision of the board of adjustment if the decision is supported by substantial evidence in the record.

(7) (a) The filing of a petition does not stay the decision of the board of adjustment.

(b) (i) Before filing a petition under this section or a request for mediation or arbitration of a constitutional taking issue under Section 63-34-13, the aggrieved party may petition the board of adjustment to stay its decision.

(ii) Upon receipt of a petition to stay, the board of adjustment may order its decision stayed pending district court review if the board of adjustment finds it to be in the best interest of the county.

(iii) After a petition is filed under this section or a request for mediation or arbitration of a constitutional taking issue is filed under Section 63-34-13, the petitioner may seek an injunction staying the board of adjustment's decision.

History: C. 1953, 17-27-708, enacted by L. 1991, ch. 235, § 93; 1999, ch. 291, § 5.

Amendment Notes. — The 1999 amendment, effective May 3, 1999, added Subsection (3)(b) and the Subsection (3)(a) designation and inserted the language beginning "under this section" and ending "Section 63-34-13" twice in Subsection (7)(b), making a minor stylistic change.

NOTES TO DECISIONS

Analysis

Discretion of board.
Cited.

Discretion of board.

The board will be found to have exercised its discretion within the proper boundaries unless its decision is arbitrary, capricious, or illegal and, further, "[t]he court shall affirm the substantial evidence in the record"; together, these concepts mean that the board's decision can only be considered arbitrary or capricious if not supported by substantial evidence. Patterson v. Utah County Bd. of Adjustment, 893 P.2d 602 (Utah Ct. App. 1995).

Cited in Ludlow v. Salt Lake County Bd. of Adjustment, 893 P.2d 1101 (Utah Ct. App. 1995).

PART 8
SUBDIVISIONS

17-27-801. Enactment of subdivision ordinance.

The legislative body of any county may enact a subdivision ordinance requiring that a subdivision plat comply with the provisions of the subdivision ordinance and be approved as required by this part before:

(1) it may be filed or recorded in the county recorder's office; and

(2) lots may be sold.

History: C. 1953, 17-27-801, enacted by L. 1991, ch. 235, § 94.

COLLATERAL REFERENCES

Utah Law Review. — The Failure of Subdivision Control in the Western United States: A Blueprint for Local Government Action, 1988 Utah L. Rev. 569.

Preserving Utah's Open Spaces, 1973 Utah L. Rev. 164.

Am. Jur. 2d. — 23 Am. Jur. 2d Dedication §§ 29 to 33; 83 Am. Jur. 2d Zoning and Planning § 518 et seq.

C.J.S. — 26 C.J.S. Dedication § 22.

A.L.R. — Broker's liability for fraud or misrepresentation concerning development or nondevelopment of nearby property, 71 A.L.R.4th 511.

17-27-802. Preparation — Adoption.

(1) The planning commission shall:

(a) prepare and recommend a proposed subdivision ordinance to the legislative body that regulates the subdivision of land in the county;

(b) hold a public hearing on the proposed subdivision ordinance before making its final recommendation to the legislative body; and

(c) provide reasonable notice of the public hearing at least 14 days before the date of the hearing.

(2) The legislative body shall:

(a) hold a public hearing on the proposed subdivision ordinance recommended to it by the planning commission; and

(b) provide reasonable notice of the public hearing at least 14 days before the date of the hearing.

(3) After the public hearing, the legislative body may:

(a) adopt the subdivision ordinance as proposed;

(b) amend the subdivision ordinance and adopt or reject it as amended; or

(c) reject the ordinance.

History: C. 1953, 17-27-802, enacted by L. 1991, ch. 235, § 95; 1992, ch. 23, § 43.

Cross-References. — Reasonable notice, § 17-27-103.

17-27-803. Amendments to subdivision ordinance.

(1) The legislative body may amend the provisions of the subdivision ordinance if the proposed amendment was proposed by or submitted to the planning commission for its approval, disapproval, or suggestions.

(2) The legislative body and the planning commission shall comply with the procedures contained in Section 17-27-802 in adopting an amendment to the subdivision ordinance.

History: C. 1953, 17-27-803, enacted by L. 1991, ch. 235, § 96.

17-27-804. Plats required.

(1) Unless exempt under Section 17-27-806 or not included in the definition of a subdivision under Subsection 17-27-103(1), whenever any lands are

divided, the owner of those lands shall have an accurate plat made of them that sets forth and describes:

(a) all the parcels of ground divided, by their boundaries, course, and extent, and whether they are intended for streets or other public uses, together with any areas that are reserved for public purposes; and

(b) all blocks and lots intended for sale, by numbers, and their precise length and width.

(2) (a) The owner of the land shall acknowledge the plat before an officer authorized by law to take the acknowledgement of conveyances of real estate.

(b) The surveyor making the plat shall certify it.

(c) The county legislative body shall approve the plat as provided in this part. Before the legislative body may approve a map or plat, the owner of the land shall provide the legislative body with a tax clearance indicating that all taxes, interest, and penalties owing on the land have been paid.

(3) After the plat has been acknowledged, certified, and approved, the owner of the land shall file and record it in the county recorder's office in the county in which the lands platted and divided are situated.

History: C. 1953, 17-27-804, enacted by L. 1991, ch. 235, § 97; 1994, ch. 17, § 1; 1995, ch. 181, § 3; 1997, ch. 151, § 4; 1998, ch. 13, § 12.

Amendment Notes. — The 1995 amendment, effective May 1, 1995, added the second sentence in Subsection (2)(c).

The 1997 amendment, effective May 5, 1997, inserted "or not included in the definition of a subdivision under Subsection 17-27-103(1)(r)" in Subsection (1).

The 1998 amendment, effective May 4, 1998, updated the second section reference in Subsection (1).

Retrospective Operation. — Laws 1995, ch. 181, § 25 provides: "This act has retrospective operation for taxable years beginning on or after January 1, 1995."

Cross-References. — County recorder, § 17-21-1 et seq.

Fee for recording, § 21-2-3.

NOTES TO DECISIONS

Analysis

Approval of council.
Approval under council-mayor form.
Conditions for approval.
—Fees.
Location of streets.
—Present use.

Approval of council.

Although the city engineer and the planning and zoning commission approved a subdivision plat requiring a six-inch water line to connect with the city water system, the city council could refuse to approve the plat unless an eight-inch water line was provided for. Wright Dev., Inc. v. City of Wellsville, 608 P.2d 232 (Utah 1980).

Approval under council-mayor form.

Under a council-mayor form of government, approval of subdivision plat by mayor pursuant to an ordinance adopted by city council providing for such approval satisfies the approval requirements of former section. Martindale v. Anderson, 581 P.2d 1022 (Utah 1978).

Conditions for approval.

—Fees.

Requiring subdivider to pay a water connection fee and a park improvement fee as a condition to connection of the subdivision to the city water main and as a condition to final approval of the subdivider's plat would be valid if such fees were reasonable. Banberry Dev. Corp. v. South Jordan City, 631 P.2d 899 (Utah 1981).

Location of streets.

—Present use.

The court rejected as unsound the argument that streets could not be located on the plat of a township unless the street was already in use. Hall v. North Ogden City, 109 Utah 304, 166 P.2d 221, judgment set aside on other grounds on rehearing, Hall v. North Ogden City, 109 Utah 325, 175 P.2d 703 (1946).

COLLATERAL REFERENCES

C.J.S. — 26 C.J.S. Dedication § 22.

17-27-805. Subdivision approval procedure.

A person may not submit a plat of a subdivision to the county recorder's office for filing or recording unless a recommendation has been received from the planning commission and:

(1) the plat has been approved by:

(a) the legislative body; or

(b) other officers that the legislative body designates in an ordinance; and

(2) the approvals are entered in writing on the plat by the chief executive officer or chairperson of the legislative body or by the other officers designated in the ordinance.

History: C. 1953, 17-27-805, enacted by L. 1991, ch. 235, § 98; 1992, ch. 23, § 44; 1997, ch. 142, § 2.

Amendment Notes. — The 1997 amendment, effective May 5, 1997, substituted "submit" for "file or record," added "for filing or recording," and made stylistic changes in the introductory paragraph and substituted "the plat" for "it" at the beginning of Subsection (1).

17-27-806. Exemptions from plat requirement.

In subdivisions of less than ten lots, land may be sold by metes and bounds, without the necessity of recording a plat if:

(1) a recommendation has been received from the planning commission;

(2) the deed contains a stamp or other mark indicating that the subdivision has been approved by:

(a) the legislative body; or

(b) other officers that the legislative body designates in an ordinance;

(3) the subdivision is not traversed by the mapped lines of a proposed street as shown in the general plan and does not require the dedication of any land for street or other public purposes; and

(4) if the subdivision is located in a zoned area, each lot in the subdivision meets the frontage, width, and area requirements of the zoning ordinance or has been granted a variance from those requirements by the board of adjustment.

History: C. 1953, 17-27-806, enacted by L. 1991, ch. 235, § 99; 1992, ch. 23, § 45; 1995, ch. 179, § 17.

Amendment Notes. — The 1995 amendment, effective May 1, 1995, added "the deed contains a stamp or other mark indicating that" at the beginning of Subsection (2).

17-27-807. Dedication of streets.

(1) Maps and plats, when made, acknowledged, filed, and recorded according to the procedures specified in this part, operate as a dedication of all streets and other public places, and vest the fee of those parcels of land in the county for the public for the uses named or intended in those maps or plats.

(2) The dedication established by this section does not impose liability upo the county for streets and other public places that are dedicated in this manne but unimproved.

History: C. 1953, 17-27-807, enacted by L. 1991, ch. 235, § 100.

NOTES TO DECISIONS

ANALYSIS

Duty to complete improvements.
Effect of dedication.
—Fee title.
Location of streets.
—Present use.
Rights of owners of abutting land.
—Boundary by acquiescence.
—Damages.

Duty to complete improvements.

Former § 57-5-4 created a duty on the part of a city to bring about the completion of subdivision improvements after a subdivision developer contracted with the city to install the improvements at his own expense, and the city received commitments from banks or mortgage companies to deposit funds in escrow to pay for the improvements. Cox v. Utah Mtg. & Loan Corp., 716 P.2d 783 (Utah 1986).

Effect of dedication.

—Fee title.

The Legislature did not regard the dedication to the public of a street in a platted subdivision as the surrender of an easement with retention of the fee to the corpus in the abutting owner. White v. Salt Lake City, 121 Utah 134, 239 P.2d 210 (1952) (interpreting former § 57-5-4 with § 17-5-233 and former § 27-3-3).

A statutory dedication by the filing of plats of a subdivision vests a fee title in the municipality or county to the streets shown thereon. Oregon Short Line R.R. v. Murray City, 2 Utah 2d 427, 277 P.2d 798 (1954).

Location of streets.

—Present use.

The court rejected as unsound the argument that streets could not be located on the plat of a township unless the street was already in use. Hall v. North Ogden City, 109 Utah 304, 166 P.2d 221, judgment set aside on other grounds on rehearing, Hall v. North Ogden City, 109 Utah 325, 175 P.2d 703 (1946).

Rights of owners of abutting land.

—Boundary by acquiescence.

Where county owned street separating property owned by two parties, the doctrine of boundary by acquiescence could not apply since the requirement that the parties be "adjoining landowners was not met. Condas v. Willes 674 P.2d 115 (Utah 1983).

—Damages.

The owner of abutting land is not entitled to damages for the laying of a city water main in a street in a platted subdivision where the permission of the commissioners of the county in which the street is situated has been obtained. White v. Salt Lake City, 121 Utah 134, 239 P.2d 210 (1952).

COLLATERAL REFERENCES

C.J.S. — 26 C.J.S. Dedication § 22.

17-27-808. Vacating or changing a subdivision plat.

(1) (a) Subject to Subsection (2), the county legislative body or any other officer that the legislative body designates by ordinance may, with or without a petition, consider any proposed vacation, alteration, or amendment of a subdivision plat, any portion of a subdivision plat, or any street, lot, or alley contained in a subdivision plat at a public hearing.

(b) If a petition is filed, the responsible body or officer shall hold the public hearing within 45 days after receipt of the planning commission's recommendation under Subsection (2) if:

(i) the plat change includes the vacation of a public street or alley;

(ii) any owner within the plat notifies the municipality of their objection in writing within ten days of mailed notification; or

(iii) a public hearing is required because all of the owners in the subdivision have not signed the revised plat.

(2) (a) Before the county legislative body or officer designated by the county legislative body may consider a proposed vacation, alteration, or amendment under Subsection (1)(a) or (6), the county legislative body or officer shall refer the proposal to the planning commission for its recommendation.

(b) The planning commission shall give its recommendation within 30 days after the proposed vacation, alteration, or amendment is referred to it.

(3) Any fee owner, as shown on the last county assessment rolls, of land within the subdivision that has been laid out and platted as provided in this part may, in writing, petition the legislative body to have the plat, any portion of it, or any street or lot contained in it, vacated, altered, or amended as provided in this section.

(4) Each petition to vacate, alter, or amend an entire plat, a portion of a plat, or a street or lot contained in a plat shall include:

(a) the name and address of all owners of record of the land contained in the entire plat;

(b) the name and address of all owners of record of land adjacent to any street that is proposed to be vacated, altered, or amended; and

(c) the signature of each of these owners who consents to the petition.

(5) (a) A petition that lacks the consent of all owners referred to in Subsection (4) may not be scheduled for consideration at a public hearing before the responsible body or officer until the notice required by this part is given.

(b) The petitioner shall pay the cost of the notice.

(6) Subject to Subsection (2), if the responsible body or officer proposes to vacate, alter, or amend a subdivision plat, or any street or lot contained in a subdivision plat, they shall consider the issue at a public hearing after giving the notice required by this part.

(7) Petitions to adjust lot lines between adjacent properties may be executed upon the recordation of an appropriate deed if:

(a) no new dwelling lot or housing unit results from the lot line adjustment;

(b) the adjoining property owners consent to the lot line adjustment;

(c) the lot line adjustment does not result in remnant land that did not previously exist; and

(d) the adjustment does not result in violation of applicable zoning requirements.

History: C. 1953, 17-27-808, enacted by L. 1991, ch. 235, § 101; 1995, ch. 179, § 18; 1999, ch. 176, § 2.

Amendment Notes. — The 1995 amendment, effective May 1, 1995, inserted "or any other officer that the legislative body designates by ordinance" in Subsection (1)(a); substituted "responsible body or officer" for "county legislative body" in Subsection (1)(b) and for "legislative body" in Subsections (4)(a) and (5); added Subsections (1)(b)(i) to (1)(b)(iii) and (6); and made a stylistic change.

The 1999 amendment, effective May 3, 1999, added "Subject to Subsection (2)" in Subsections (1)(a) and (6); substituted the language beginning "receipt of" for "it is filed" in Subsection (1)(b); added Subsection (2), redesignating the other subsections accordingly; and made stylistic changes.

NOTES TO DECISIONS

Statutory history.
The origin of former section in the Laws of 1894 and its later status are given in Hall v. North Ogden City, 109 Utah 304, 166 P.2d 221, judgment set aside on other grounds on rehearing, Hall v. North Ogden City, 109 Utah 325, 175 P.2d 703 (1946).

COLLATERAL REFERENCES

Utah Law Review. — The Failure of Subdivision Control in the Western United States: A Blueprint for Local Government Action, 1988 Utah L. Rev. 569.

C.J.S. — 26 C.J.S. Dedication § 60.

17-27-809. Notice of hearing for plat change.

(1) (a) The responsible body or officer shall give notice of the proposed plat change by mailing the notice to each owner of property located within 300 feet of the property that is the subject of the proposed plat change, addressed to the owner's mailing address appearing on the rolls of the county assessor of the county in which the land is located.

(b) The responsible body or officer shall ensure that the notice includes:

(i) a statement that anyone objecting to the proposed plat change must file a written objection to the change within ten days of the date of the notice;

(ii) a statement that if no written objections are received by the legislative body within the time limit, no public hearing will be held; and

(iii) the date, place, and time when a hearing will be held, if one is required, to consider a vacation, alteration, or amendment without a petition when written objections are received or to consider any petition that does not include the consent of all land owners as required by Section 17-27-808.

(2) If the proposed change involves the vacation, alteration, or amendment of a street, the responsible body or officer shall give notice of the date, place, and time of the hearing by:

(a) mailing notice as required in Subsection (1); and

(b) (i) publishing the notice once a week for four consecutive weeks before the hearing in a newspaper of general circulation in the county in which the land subject to the petition is located; or

(ii) if there is no newspaper of general circulation in the county, posting the notice for four consecutive weeks before the hearing in three public places in that county.

History: C. 1953, 17-27-809, enacted by L. 1991, ch. 235, § 102; 1995, ch. 179, § 19; 1997, ch. 69, § 2.

Amendment Notes. — The 1995 amendment, effective May 1, 1995, rewrote Subsection (1), adding the provisions specifying the contents of the notice and, in Subsection (2) and the beginning of Subsection (1), substituted "responsible body or officer" for "legislative body."

The 1997 amendment, effective May 5, 1997, substituted "each owner of property located within 300 feet of the property that is the subject of the proposed plat change, addressed to the owner's mailing address" for "all owners referred to in Section 10-9-808, addressed to their mailing addresses" in Subsection (1)(a), and made two stylistic changes in Subsection (2)(b).

17-27-810. Grounds for vacating or changing a plat.

(1) (a) Within 30 days after the public hearing required by this part, the responsible body or officer shall consider the petition.

(b) If the responsible body or officer is satisfied that neither the public nor any person will be materially injured by the proposed vacation, alteration, or amendment, and that there is good cause for the vacation, alteration, or amendment, the legislative body, by ordinance, may vacate, alter, or amend the plat, any portion of the plat, or any street or lot.

(c) The responsible body or officer may approve the vacation, alteration, or amendment by ordinance, amended plat, administrative order, or deed containing a stamp or mark indicating approval by the responsible body or officer.

(d) The responsible body or officer shall ensure that the vacation, alteration, or amendment is recorded in the office of the county recorder in which the land is located.

(2) An aggrieved party may appeal the responsible body's or officer's decision to district court as provided in Section 17-27-1001.

History: C. 1953, 17-27-810, enacted by L. 1991, ch. 235, § 103; 1995, ch. 179, § 20.

Amendment Notes. — The 1995 amendment, effective May 1, 1995, substituted "responsible body or officer" for "legislative body" in four places, added Subsection (1)(c), and redesignated former Subsection (1)(c) as Subsection (1)(d).

NOTES TO DECISIONS

Civil liability.
The purpose of former §§ 57-5-5 and 17-27-21 was to impose a duty running to the sovereign, and a violation thereof did not necessarily give rise to civil liability. Ellis v. Hale, 13 Utah 2d 279, 373 P.2d 382 (1962).

COLLATERAL REFERENCES

C.J.S. — 26 C.J.S. Dedication § 23.

17-27-811. Plat void if filed without approvals — Penalties.

(1) (a) A county recorder may not file or record a plat of a subdivision without the approvals required by this part.

(b) Any plat of a subdivision filed or recorded without the approvals required by this part is void.

(2) (a) Any owner or agent of the owner of any land located in a subdivision as defined in this part who transfers or sells any land in that subdivision before a plan or plat of the subdivision has been approved and recorded as required in this part is guilty of a violation of this part for each lot or parcel transferred or sold.

(b) The description by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring does not exempt the transaction from a violation or from the penalties or remedies provided in this part.

History: C. 1953, 17-27-811, enacted by L. 1991, ch. 235, § 104; 1997, ch. 142, § 3.

Amendment Notes. — The 1997 amendment, effective May 5, 1997, substituted "may

not file or record" for "who files or records," deleted "is guilty of a misdemeanor" following "part," and **made a stylistic change** in Subsection (1)(a).

PART 9

ACCESS TO SOLAR ENERGY

17-27-901. Restrictions for solar and other energy devices.

(1) The legislative body, in order to protect and ensure access to sunlight for solar energy devices, may adopt regulations governing legislative subdivision development plans that relate to the use of restrictive covenants or solar easements, height restrictions, side yard and setback requirements, street and building orientation and width requirements, height and location of vegetation with respect to property boundary lines, and other permissible forms of land use controls.

(2) The legislative body may refuse to approve or renew any plat or subdivision plan, or dedication of any street or other ground, if the deed restrictions, covenants, or similar binding agreements running with the land for the lots or parcels covered by the plat or subdivision prohibit or have the effect of prohibiting reasonably sited and designed solar collectors, clotheslines, or other energy devices based on renewable resources from being installed on buildings erected on lots or parcels covered by the plat or subdivision.

History: C. 1953, 17-27-901, enacted by L. 1991, ch. 235, § 105.

COLLATERAL REFERENCES

Journal of Energy Law and Policy. — The Role of the Courts in Advancing the Use of Solar Energy, 9 J. Energy L. & Pol'y 135 (1989).

PART 10

APPEALS AND ENFORCEMENT

17-27-1001. Appeals.

(1) No person may challenge in district court a county's land use decisions made under this chapter or under the regulation made under authority of this chapter until that person has exhausted all administrative remedies.

(2) (a) Any person adversely affected by any decision made in the exercise of the provisions of this chapter may file a petition for review of the decision with the district court within 30 days after the local decision is rendered.

(b) (i) The time under Subsection (2)(a) to file a petition is tolled from the date a property owner files a request for arbitration of a constitutional taking issue with the private property ombudsman under Section 63-34-13 until 30 days after:

(A) the arbitrator issues a final award; or

(B) the private property ombudsman issues a written statement under Subsection 63-34-13(4)(b) declining to arbitrate or to appoint an arbitrator.

(ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional taking issues that are the subject of the request for arbitration filed with the private property ombudsman by a property owner.

(iii) A request for arbitration filed with the private property ombudsman after the time under Subsection (2)(a) to file a petition has expired does not affect the time to file a petition.

(3) The courts shall:

(a) presume that land use decisions and regulations are valid; and

(b) determine only whether or not the decision is arbitrary, capricious, or illegal.

History: C. 1953, 17-27-1001, enacted by L. 1991, ch. 235, § 106; 1996, ch. 79, § 20; 1999, ch. 291, § 6.

Amendment Notes. — The 1996 amendment, effective April 29, 1996, substituted "that person has exhausted all" for "they have exhausted their" in Subsection (1).

The 1999 amendment, effective May 3, 1999, added Subsection (2)(b), redesignating Subsection (2) as (2)(a).

NOTES TO DECISIONS

Analysis

Exhaustion of administrative remedies.
Violation of zoning resolution.
Cited.

Exhaustion of administrative remedies.

Plaintiff seeking to enjoin construction of a trailer park was required to exhaust his administrative remedies before an action for injunctive relief could be maintained. Lund v. Cottonwood Meadows Co., 15 Utah 2d 305, 392 P.2d 40 (1964).

A party must exhaust administrative remedies before seeking judicial review of the denial of a building permit. Hatch v. Utah County Planning Dep't, 685 P.2d 550 (Utah 1984).

Plaintiff aggrieved by a decision of the county commission applying the zoning ordinance was required to appeal that decision to the board of adjustment; plaintiff could not initiate mandamus proceedings under § 17-27-1002 against the commission for its alleged violation of the ordinance. Bennion v. Sundance Dev. Corp., 897 P.2d 1232 (Utah Ct. App. 1995).

Violation of zoning resolution.

Landowners under former § 17-27-23 had a separate cause of action in the courts when a violation of a zoning resolution was charged; but where the alleged violation of the ordinance arose from the administration of the zoning ordinance by an administrative agency, appeal from the administrative ruling should have been taken to the proper administrative tribunal, or a suit should have been commenced in the courts within ninety days. Lund v. Cottonwood Meadows Co., 15 Utah 2d 305, 392 P.2d 40 (1964) (decided under former § 17-27-15).

Cited in Harper v. Summit County, 963 P.2d 768 (Utah Ct. App. 1998).

17-27-1002. Enforcement.

(1) (a) A county, county attorney, or any owner of real estate within the county in which violations of this chapter or ordinances enacted under the authority of this chapter occur or are about to occur may, in addition to other remedies provided by law, institute:

(i) injunctions, mandamus, abatement, or any other appropriate actions; or

(ii) proceedings to prevent, enjoin, abate, or remove the unlawful building, use, or act.

(b) A county need only establish the violation to obtain the injunction.

(2) (a) The county may enforce the ordinance by withholding building permits.

(b) It is unlawful to erect, construct, reconstruct, alter, or change the use of any building or other structure within a county without approval of a building permit.

(c) The county may not issue a building permit unless the plans of and for the proposed erection, construction, reconstruction, alteration, or use fully conform to all regulations then in effect.

History: C. 1953, 17-27-1002, enacted by L. 1991, ch. 235, § 107.

NOTES TO DECISIONS

ANALYSIS

Findings required.
Injunctions.
Wrongful denial of use permit.
Cited.

Findings required.

Justification for denial of use permit to owner of unzoned land may not be based on hearsay and opinion evidence gathered at an informal meeting without opportunity to cross-examine, and without any findings of fact; nor may denial be based on the retrospective application of an ex post facto zoning ordinance. Contracts Funding & Mtg. Exch. v. Maynes, 527 P.2d 1073 (Utah 1974) (decided under former chapter).

Injunctions.

Under former section, injunctive relief was available as an alternative to criminal prosecution; a specific showing of irreparable injury was not required to obtain injunctive relief against a violation of a zoning resolution. Utah County v. Baxter, 635 P.2d 61 (Utah 1981).

Wrongful denial of use permit.

Zoning ordinance did not apply retrospectively to deny a use permit to the owner of unzoned property who did everything required of him under the existing laws. Contracts Funding & Mortgage Exch. v. Maynes, 527 P.2d 1073 (Utah 1974) (decided under former chapter).

Cited in Bennion v. Sundance Dev. Corp., 897 P.2d 1232 (Utah Ct. App. 1995).

17-27-1003. Penalties.

(1) The county legislative body may, by ordinance, establish civil penalties for violations of any of the provisions of this chapter or of any ordinances adopted under the authority of this chapter.

(2) Violation of any of the provisions of this chapter or of any ordinances adopted under the authority of this chapter are punishable as a class C misdemeanor upon conviction either:

(a) as a class C misdemeanor; or

(b) by imposing the appropriate civil penalty adopted under the authority of this section.

History: C. 1953, 17-27-1003, enacted by L. 1991, ch. 235, § 108; 1992, ch. 23, § 46.

Cross-References. — Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

CHAPTER 27a

CREATING NEW TOWNSHIPS [REPEALED]

17-27a-101 to 17-27a-105. Repealed.

Repeals. — Laws 1997, ch. 389, § 57 repeals §§ 17-27a-101 to 17-27a-105, as enacted by Laws 1996, ch. 308, §§ 8 to 12, providing for elections and petitions for the creation of a township and a township planning and zoning board, effective May 5, 1997. For related provisions, see §§ 17-27-200.5 to 17-27-206.

CHAPTER 28

FIREMEN'S CIVIL SERVICE COMMISSION

17-28-1. County Fire Civil Service Council.

(1) There is created in each of the counties of this state having and maintaining a regularly organized fire department in which there are regularly employed four or more paid firefighters, a County Fire Civil Service Council consisting of three members to be appointed by the county legislative body.

(2) Each member shall serve for a term of three years except that the county legislative body shall appoint the original council members as follows:

(a) one member for a period of one year;

(b) one member for a period of two years; and

(c) one member for a period of three years.

History: L. 1945, ch. 36, § 1; C. 1943, Supp., 19-24a-1; L. 1992, ch. 115, § 1.

Cross-References. — Firefighters' Retirement Act, § 49-5-101 et seq.

EXHIBIT "C"

Title 19

ZONING

Chapters:

Chapter 19.02

GENERAL PROVISIONS AND ADMINISTRATION

Sections:

19.02.010 Title for citation.

This title shall be known as the "Uniform Zoning Ordinance of Salt Lake County, Utah," and may be so cited and pleaded. This title shall also be known as Title 19, Salt Lake County Code of Ordinances. (1986 Recodification; prior code § 22-1-1)

19.02.020 Purpose of provisions.

This title is designed and enacted for the purpose of promoting the health, safety, morals, conveniences, order, prosperity and welfare of the present and future inhabitants of Salt Lake County, including, among other things, the lessening of congestion in the streets or roads, securing safety from fire and other dangers, providing adequate light and air, classification of land uses and distribution of land development and utilization, protection of the tax base, securing economy in governmental expenditures, fostering the county's agricultural and other industries, and the protection of both urban and nonurban development. (Prior code § 22-1-2)

19.02.030 Interpretation as minimum requirements.

In interpreting and applying the provisions of this title, the requirements contained herein are declared to be the minimum requirements for the purposes set forth. (Prior code § 22-1-3)

19.02.040 Resolution of conflicts.

This title shall not nullify the more restrictive provisions of covenants, agreements, other ordinances, or laws, but shall prevail notwithstanding such provisions which are less restrictive. (Prior code § 22-1-4)

19.02.050 Effect on previous ordinances and maps.

The existing ordinances of the county covering the zoning of areas and districts in Salt Lake County, in their entirety and including the maps theretofore adopted and made a part of such ordinances, are hereby superseded and amended to read as set forth in this title; provided, however that this title, including the maps on file with the county planning commission and by this reference made a part hereof, shall be deemed a continuation of previous ordinances, and not a new enactment, insofar as the substance of revisions of previous ordinances is included in this title, whether in the same or in different language; and this title shall be so interpreted upon all questions of construction, including but not limited to questions of construction, relating to tenure of officers and boards established by previous ordinances, and to questions of conforming or nonconforming uses, buildings or structures, and to questions as to the dates upon which such uses, buildings or structures became conforming or nonconforming. (Prior code § 22-1-5)

19.02.060 Licensing requirements.

All departments, officials and public employees of the county which are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this title and shall issue no permits or licenses for use, building or purpose where the same would be in conflict with the provi-

sions of this title, and any such permit or license, if issued in conflict with the provisions of this title, shall be null and void. (Prior code § 22-1-10)

19.02.070 Time computation.

A. In computing any period of time prescribed or allowed by this title, the day of the act, event or decision after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day, which is neither a Saturday, Sunday or a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. A half-holiday shall be considered as other days and not as a holiday.

B. The date of a decision or recommendation of the planning commission shall be the date of the public meeting or hearing such decision or recommendation is made. If the decision is made by the development services director, the date of the decision shall be the date specified on the property owner's notification letter in the application file. (Ord. 979 § 2, 1986: § 1 (part) of Ord. 2560, passed 11/23/81; prior code § 22-1-12)

19.02.080 Site plans required—Contents.

A detailed site plan, drawn to scale (scale and sheet size to be determined by the director) shall be filed as part of any application prior to consideration or for any building permit. The site plan shall show, where pertinent:

A. Note of scale used;

B. Direction of North point;

C. Lot lines, together with adjacent streets, roads and rights-of-way;

D. Location of all existing structures on subject property and adjoining properties (completely dimensioned, including utility lines, poles, etc);

E. Location of the proposed construction and improvements, including the location of all signs;

F. Motor vehicle access, including individual parking stalls, circulation patterns, curb, gutter, and sidewalk location;

G. Necessary explanatory notes;

H. Name, address and telephone number of builder and owner;

I. All other information that may be required, as determined by the director. (Ord. 870 (part), 1983: prior code § 22-3-4)

19.02.090 Building and use permits required.

Construction, alteration, repair or removal of any building or structure, or any part thereof, as provided or as restricted in this title, shall not be commenced or proceeded with except after the issuance of a written permit for the same by the county building inspector. The use of the land shall not be commenced or proceeded with except upon the issuance of a written permit for the same by the development services division director. No use permit shall be required for land used for agricultural purposes, as defined in this title, and/or for the keeping or raising of animals or fowl. (Ord. 982 § 2, 1986: prior code § 22-1-7)

19.02.100 Compliance prerequisite to permit issuance.

After the effective date of the ordinance codified in this title, no building permit may be issued without first having been approved by the director. The director shall not approve a building permit if any building, structure or use of land would be in violation of any of the provisions of this title, nor shall any other county officer grant any permit or license nor the use of any building or land if use would be in violation of this title. (Prior code § 22-3-3)

19.02.110 Improvements—Performance bonds.

A. Any improvements required under this title or by the planning commission, including but not limited to curb, gutter and sidewalk, fences, landscaping, streets, fire hydrants and parking, shall be satisfactorily installed prior to the county authoriz-

ing electrical service being provided; or, if no electrical service is required, prior to issuance of any occupancy permit for the land being developed. In lieu of actual completion of such improvements prior to electrical service being provided or occupancy permit, a developer may file with the county commission a cash or surety bond or escrow agreement or letter of credit, in an amount specified by the county commission, to ensure completion of improvements within one year. Twenty-five percent of the bond amount for public improvements, such as curb, gutter, sidewalk, road surfacing and fire hydrants, shall extend for a one-year period beyond the date the improvements are completed, to guarantee replacement of such defective public improvements. Upon completion of the improvements for which a bond or escrow agreement has been filed, the developer shall call for inspections of the improvements by the development services director or his authorized agent.

B. If the board of county commissioners determines that the required improvements should be completed in a specified sequence and/or in less than a one-year period in order to protect the health, safety and welfare of the county or its residents from traffic, flood, drainage or other hazards, it may require in approving the bond that the improvements be installed in a specified sequence and period which may be less than one year and shall incorporate such requirements in the bond.

C. Such bonds shall be processed and released in accordance with the procedures set forth in Chapter 3.56 of this code.

D. When the developer is a school district, municipality, service area, special-purpose district or other political subdivision of the state, the board of county commissioners may waive the bond and accept a letter from the governing body guaranteeing installation of the improvements. Before approving any such waiver, the board of county commissioners shall receive a recommendation from the public works department. (§ 1 of Ord. passed 4/3/85: Ord. 871, 1983: Ord. passed 4/21/82: § 1 (part) of Ord. 2560, passed 11/23/81: Ord. 789, 1981: prior code § 22-1-9)

19.02.120 Development standards.

The planning commission may adopt development standards for use as a guide in conditional use review and subdivision design, and for use in site plan review for single-family dwellings in forest and recreation zones. (Ord. 1262 § 1, 1994)

Chapter 19.04

DEFINITIONS

Sections:

19.04.005 Definitions and interpretation of language.

For the purpose of this title, certain words and terms are defined as set out in this chapter. Words used in the present tense include the future; words in the singular number include the plural and the plural the singular; and words included herein but defined in the building code shall be construed as defined therein. (Prior code § 22-1-6 (part))

19.04.010 Abandonment.

"Abandonment." See Section 19.88.130. (Prior code § 22-1-6(1))

19.04.020 Agriculture.

"Agriculture" means the tilling of the soil, the raising of crops, horticulture and gardening, but not including the keeping or raising of domestic animals or fowl, except household pets, and not including any agricultural industry or business such as fruit-packing plants, fur farms, animal hospitals or similar uses. (Prior code § 22-1-6(2))

19.04.025 Airport.

"Airport" means any landing area, runway or other facility designed, used or intended to be used either publicly or by any persons for the landing and taking off of aircraft, including all necessary taxiways, aircraft storage and tiedown areas, hangars, and all other necessary buildings and open spaces. (Prior code § 22-1-6(3))

19.04.030 Alley.

"Alley" means a public thoroughfare less than twenty-five feet wide. (Prior code § 22-1-6(4))

19.04.035 Amusement device.

"Amusement device" means any video game, pinball or other machine, whether mechanically or electronically operated that, upon insertion of a coin, trade-token, slug or similar object, or upon payment of money or other consideration through use of a metered or similar device, operates or may be operated as a game or contest of skill or amusement of any kind or description, and that contains no automatic payoff for the return of money or trade-tokens, or that makes no provision whatever for the return of money to the player. An amusement device is further defined as any machine, apparatus or contrivance that is used or that may be used as a game of skill and amusement wherein or whereby the player initiates, employs or directs any force generated by the machine. An amusement device shall exclude billiard, pool or bagatelle tables. (Ord. 1172A § 2, 1991: (part) of Ord. passed 3/3/82: prior code § 22-1-6 (part))

19.04.040 Antique.

"Antique" means a relic, work of art, piece of furniture or other decorative object of ancient times, or made in a former age or period, highly valued for its beauty, craftsmanship or rarity. ((Part) of Ord. passed 4/21/82: prior code § 22-1-6 (part))

19.04.045 Apartment court.

"Apartment court" means any building or group of buildings which contains dwelling units, and also satisfies the definition of tourist court, as defined in this chapter. (Prior code § 22-1-6(7))

19.04.050 Apartment house.

"Apartment house" means a multiple dwelling; see "Dwelling, multiple-family." (Prior code § 22-1-6(6))

19.04.055 Apartment hotel.

"Apartment hotel" means any building which contains dwelling units and also satisfies the definition of a hotel, as defined in this chapter. (Prior code § 22-1-6(5))

19.04.057 Apartments for elderly persons.

"Apartments for elderly persons" means an apartment building or complex of buildings, twenty-four units or greater for occupancy exclusively by persons at least sixty-two years of age. (Ord. 1331 § 2, 1996)

19.04.060 Arcade.

"Arcade" means any business catering to minors, containing four or more amusement devices. ((Part) of Ord. passed 3/3/82: prior code § 22-1-6 (part))

19.04.065 Area of special flood hazard.

"Area of special flood hazard" means the land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. (§ 1 (part) of Ord. passed 11/13/85: prior code § 22-1-6(110))

19.04.070 Base flood.

"Base flood" means a flood having a one-percent chance of being equaled or exceeded in any given year. (§ 1 (part) of Ord. passed 11/12/85: prior code § 22-1-6(111))

19.04.075 Basement.

"Basement" means any floor level below the first story in a building, except that a floor level in a building having only one floor level shall be classified as a basement unless such floor level qualifies as a first story. (Ord. 1091 § 3, 1989: prior code § 22-1-6(8))

19.04.077 Bed and breakfast homestay.

"Bed and breakfast homestay" means a dwelling which has frontage on a street with a minimum right-of-way of sixty feet, contains a maximum of five guestrooms, is occupied by the owner or individual responsible for operating the facility, and used for accommodations or lodging of guests paying compensation. Breakfast may be served during

the a.m. hours. Lunch or dinner may not be served. This use shall not change the character of the dwelling or property for residential purposes, and shall meet the requirements of the Salt Lake City-County health department and the Salt Lake County fire department. (The requirements of the Salt Lake City-County health department limit breakfast to a continental-type breakfast unless certain specified health regulations are met.) (Ord. 1198 §§ 2, 4, 1992: Ord. 1088 § 3, 1989)

19.04.078 Bed and breakfast inn.

"Bed and breakfast inn" means a building containing a minimum of six guestrooms, but not more than thirty guestrooms (except the R-4-8.5 and R-M zones which are limited to a maximum of twenty guestrooms), is used for accommodations or lodging of guests paying compensation where at least a breakfast meal is served, and in which no provision is made for cooking in any individual guestroom. The structure shall have a residential appearance, and be limited to a maximum of two stories in height. (Ord. 1198 §§ 3, 5, 1992)

19.04.080 Boardinghouse.

"Boardinghouse" means a building with not more than five guestrooms, where, for compensation, meals are provided for at least five but not more than fifteen persons. (Prior code § 22-1-6(9))

19.04.085 Building.

"Building" means any structure having a roof supported by columns or walls, for the housing or enclosure of persons, animals or chattels. (Prior code § 22-1-6(10))

19.04.090 Building, accessory.

"Accessory building" means a detached, subordinate building clearly incidental to and located upon the same lot occupied by the main building. Also, a building clearly incidental to an agriculture or animal care land use located on a lot in an agriculture zone, which lot meets the minimum lot size for such zone and is not under one acre in area. (Prior code § 22-1-6(11))

19.04.095 Building, height of.

A. "Height of building" means the vertical distance above the lowest original ground surface at any point on the perimeter of the building to the highest point of the coping of a flat roof, or to the deck line of a mansard roof, or to a point midway between the lowest part of the eaves or cornice and the highest point of a pitched or hipped roof.

B. Buildings may be stepped to accommodate the slope of the terrain provided that each step shall be at least twelve feet in horizontal dimension. The height of each stepped building segment shall be measured as required in subsection A.

C. Original ground surface shall be the elevation of the ground surface in its natural state before any manmade alterations including but not limited to grading, excavation or filling, excluding improvements required by zoning or subdivision ordinances. When the elevation of the original ground surface is not readily apparent because of previous manmade alterations, the elevation of the original grade shall be determined by the development services division using the best information available. (Ord. 1237 § 2, 1993: Ord. 1091 § 4, 1989: prior code § 22-1-6(12))

19.04.100 Building, main.

"Main building" means the principal building or one of the principal buildings upon a lot, or the building or one of the principal buildings housing a principal use upon a lot. (Prior code § 22-1-6(13))

19.04.105 Canopy.

"Canopy" means a roofed structure supported by a building and/or supports extending to the ground directly underneath the canopy, and providing a protective shield for service-station pump islands and walkways. (Prior code § 22-1-6 (part))

19.04.110 Carport.

"Carport" means a private garage not completely enclosed by walls or doors. For the purpose of this title, a carport shall be subject to all of the regulations prescribed for a private garage. (Prior code § 22-1-6(14))

19.04.115 Child nursery.

"Child nursery" means an establishment for the care, whether or not for compensation, of up to six children other than members of the family residing on the premises. (Ord. passed 5/26/82: prior code § 22-1-6 (part))

19.04.120 Church.

"Church" means a building, together with its accessory buildings and uses, where persons regularly assemble for religious worship, and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain public worship. ((Part) of Ord. passed 8/7/80: prior code § 22-1-6 (part))

19.04.125 Class A beer outlet.

"Class A beer outlet" means a place of business wherein beer is sold in original containers to be consumed off the premises in accordance with the Liquor Control Act of the state and the licensing ordinance of the county. (Prior code § 22-1-6(74))

19.04.130 Class B beer outlet.

"Class B beer outlet" means a place of business in connection with a bona fide restaurant wherein beer is sold in original containers for consumption on the premises; provided, that the sale of beer is less than forty percent of the gross dollar value, subject to the provisions of the licensing ordinance of the county. (Prior code § 22-1-6(75))

19.04.135 Class C beer outlet.

"Class C beer outlet" means a place of business wherein the primary or main business is that of selling beer for consumption on the premises. (Prior code § 22-1-6(76))

19.04.140 Conditional use.

"Conditional use" means a use of land for which a conditional use permit is required pursuant to Chapter 19.84 of this title. (Prior code § 22-1-6(16))

19.04.145 Corral.

"Corral" means a space, other than a building, less than one acre in area or less than one hundred feet in width, used for the confinement of animals. (Prior code § 22-1-6(17))

19.04.150 Court.

"Court" means an occupied space on a lot, other than a yard, designed to be partially surrounded by group dwellings. (Prior code § 22-1-6(18))

19.04.155 Dairy.

"Dairy" means a commercial establishment for the manufacture or processing of dairy products. (Prior code § 22-1-6(19))

19.04.160 Day care/preschool center.

"Day care/preschool center" means:

A. Any facility, other than an occupied dwelling, operated by a person qualified by the state, which provides day care, protection or supervision and/or preschool instruction.

B. No person who is violent or being treated for alcoholism or drug abuse can be placed in a day care/preschool center. Placement in a day care/preschool center may not be part of or in lieu of confinement, rehabilitation or treatment in a correctional facility. (Ord. 1159 § 2, 1991: prior code § 22-1-6 (part))

19.04.165 Development.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations. (§ 1 (part) of Ord. passed 11/13/85: prior code § 22-1-6(112))

19.04.166 Disability.

"Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment. "Disability"

does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802. (Ord. 1452 § 2 (part), 1999)

19.04.170 District.

"District" means a portion of the unincorporated area of Salt Lake County. (Prior code § 22-1-6(20))

19.04.175 Drive-in refreshment stand.

"Drive-in refreshment stand" means a place of business where food and drink are sold primarily for consumption on the premises outside the structure. (Prior code § 22-1-6(77))

19.04.180 Dwelling.

"Dwelling" means any building, or portion thereof, which is designated for use for residential purposes, except hotels, apartment hotels, boarding-houses, lodginghouses, tourist courts and apartment courts. (Ord. 1103 § 2, 1990: prior code § 22-1-6(21))

19.04.185 Dwelling, four-family.

"Four-family dwelling" means a single building under a continuous roof containing four dwelling units completely separated by either: (1) common interior walls, where the units are side by side; or (2) common interior floors, where the units are one above the other. A common wall(s) may be located within an attached garage used for the storage of private automobiles. (Ord. 1370 § 2, 1996: prior code § 22-1-6(25))

19.04.190 Dwelling group.

"Dwelling group" means a group of two or more dwellings located on a parcel of land in one ownership and having any yard or court in common. (Prior code § 22-1-6(27))

19.04.195 Dwelling, multiple-family.

"Multiple-family dwelling" means a building arranged or designed to be occupied by more than four families. (Prior code § 22-1-6(26))

19.04.200 Dwelling, single-family.

"Single-family dwelling" means a building arranged or designed to be occupied by one family, the structure having only one dwelling unit. (Prior code § 22-1-6(22))

19.04.205 Dwelling, three-family.

"Three-family dwelling" means a single building under a continuous roof containing three dwelling units completely separated by either: (1) common interior walls, where the units are side by side; or (2) common interior floors, where the units are one above the other. A common wall(s) may be located within an attached garage used for the storage of private automobiles. (Ord. 1370 § 3, 1996: prior code § 22-1-6(24))

19.04.210 Dwelling, two-family.

"Two-family dwelling" means a single building under a continuous roof containing two dwelling units completely separated by either: (1) a common interior wall, where the units are side by side; or (2) a common interior floor, where the units are one above the other. A common wall may be located within an attached garage used for the storage of private automobiles. (Ord. 1370 § 4, 1996: prior code § 22-1-6(23))

19.04.215 Dwelling unit.

"Dwelling unit" means one or more rooms physically arranged so as to create an independent housekeeping establishment for occupancy by one family with separate toilets and facilities for cooking and sleeping. (Ord. 1250 § 1, 1993)

19.04.220 Entrance.

"Entrance" means the location of ingress to a room, building or lot; a location of admittance. ((Part) of Ord. passed 8/7/80: prior code § 22-1-6 (part))

19.04.225 Exit.

"Exit" means the location of egress from a room, building or lot. ((Part) of Ord. passed 8/7/80: prior code § 22-1-6 (part))

19.04.230 Family.

"Family" means:

A. Any number of people living together in a dwelling unit and related by blood, marriage or adoption, and including up to two additional unrelated people; or

B. One to three unrelated people living together in a dwelling.

Each unrelated person owning or operating a motor vehicle shall have a lawfully located off-street parking space. (Ord. 1347 § 2, 1996: (part) of Ord. passed 3/18/81: prior code § 22-1-6(29))

19.04.235 Family food production.

"Family food production" means the keeping of not more than two cows, two sheep, two goats, twenty rabbits, fifty chickens, fifty pheasants, ten ducks, ten turkeys, ten geese and twenty pigeons, provided that an additional number of animals equal to two times the number listed above, and an additional number of fowl equal to five times the number listed above may be kept for each one-half acre of the lot over and above the minimum number of square feet required for a single-family residential

lot in the zone, and provided that not more than three of the above-listed kinds of animals and fowl are permitted at any one time on any lot smaller than one-half acre. (Prior code § 22-1-6(30))

19.04.240 Flood or flooding.

"Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

A. The overflow of inland or tidal waters; and/or

B. The unusual and rapid accumulation or runoff of surface waters from any source. (§ 1 (part) of Ord. passed 11/13/85: prior code § 22-1-6(113))

19.04.245 Flood Insurance Rate Map (FIRM).

"Flood Insurance Rate Map (FIRM)" means the official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community. (§ 1 (part) of Ord. passed 11/13/85: prior code § 22-1-6(114))

19.04.250 Flood insurance study.

"Flood insurance study" means the official report provided by the Federal Emergency Management Agency that includes flood profiles, the flood boundary-floodway map, and the water surface elevation of the base flood. (§ 1 (part) of Ord. passed 11/13/85: prior code § 22-1-6(115))

19.04.255 Floodway.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. (§ 1 (part) of Ord. passed 11/13/85: prior code § 22-1-6(116))

19.04.260 Frontage.

"Frontage" means all property fronting on one side of the street between intersecting or intercepting streets, or between a street and a right-of-way, waterway, end of dead-end streets, or political subdivision boundary, measured along the street line. An intercepting street shall determine only the boundary of the frontage on the side of the street which it intercepts. (Prior code § 22-1-6(31))

19.04.265 Garage, private.

"Private garage" means an accessory building designed or used for the storage of not more than four automobiles owned and used by the occupants of the building to which it is accessory; provided, that on a lot occupied by a multiple dwelling, the private garage may be designed and used for the storage of one and one-half times as many automobiles as there are dwelling units in the multiple dwelling. A garage shall be considered part of a dwelling if the garage and the dwelling have a roof or wall in common. A private garage may not be used for storage of more than one truck for each family dwelling upon the premises, and no such truck shall exceed two and one-half tons capacity. (Prior code § 22-1-6(32))

19.04.270 Garage, public.

"Public garage" means a building or portion thereof, other than a private garage, designed or used for servicing, repairing, equipping, hiring, selling or storing motor-driven vehicles. (Prior code § 22-1-6(33))

19.04.275 Grade.

"Grade" means the lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building and the property line or, when the property line is more than five feet from the building, between the building and a line five feet from the building. (Ord. 1091 § 5, 1989: prior code § 22-1-6(34))

19.04.277 Graffiti.

"Graffiti" means inscriptions, drawings, paintings or other visual defacing of buildings, structures or natural features, without the consent of the owner thereof, and which is not otherwise authorized and permitted in the Salt Lake County ordinances. (Ord. 1290 § 2, 1995)

19.04.280 Guest.

"Guest" means a transient person who rents or

occupies a room for sleeping purposes. (Prior code § 22-1-6(83))

19.04.285 Guestroom.

"Guestroom" means a room which is designed for double occupancy by guests, for sleeping purposes. (Prior code § 22-1-6(84))

19.04.290 Guest house.

"Guest house" means a separate dwelling structure located on a lot with one or more main dwelling structures and used for housing of guests or servants, and not rented, leased or sold separate from the rental, lease or sale of the main dwelling. (Prior code § 22-1-6(35))

19.04.293 Home day care/preschool.

"Home day care/preschool" means the keeping for care and/or preschool instruction of twelve or less children including the caregiver's own children under the age of six and not yet in full day school within an occupied dwelling and yard. (State regulations require two caregivers if there are more than six children in a home day care and may further limit the number of children allowed in a home day care.) A home day care/preschool must meet the following standards:

A. When allowed as a permitted use there shall be a maximum of six children without any employees not residing in the dwelling. When allowed as a conditional use there shall be a maximum of twelve children with not more than one employee at any one time not residing in the dwelling;

B. The use shall comply with the Salt Lake City-County health department noise regulations;

C. The play yard shall not be located in the front yard and shall only be used between eight a.m. and nine p.m.;

D. The lot shall contain one available on-site parking space not required for use of the dwelling, and an additional available on-site parking space not required for use of the dwelling for any employee not residing in the dwelling. The location of the parking shall be approved by the development services division director to insure that the parking is functional and does not change the residential character of the lot;

E. No signs shall be allowed on the dwelling or lot except a nameplate sign;

F. The use shall comply with all local, state and federal laws and regulations. (The Life Safety Code includes additional requirements if there are more than six children);

G. Upon complaint that any of the requirements of this section or any other county ordinance are being violated by a home day care/preschool caregiver, the county shall review the complaint and if substantiated may institute a license revocation proceeding under Section 5.14.020; and

H. The caregiver shall notify in writing, on a form provided by the development services division, all property owners within a three hundred foot radius of the caregiver's property concerning the licensing of a home day care/preschool at such property. (Ord. 1179 §§ 2 and 3, 1992)

19.04.295 Home occupation.

A. "Home occupation" means any use conducted entirely within a dwelling and carried on by one person residing in the dwelling unit, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character of the dwelling or property for residential purposes, and in connection with which there is no display nor stock in trade, "stock in trade" being any item offered for sale which was not produced on the premises.

B. The home occupation shall not include the sale of commodities except those produced on the premises; provided, however, that original or reproductions of works of art designed or created by the artist operating a home occupation may be stored and sold on the premises. "Reproduction of works of art" includes, but is not limited to printed reproduction, casting, and sound recordings.

C. The home occupation shall not involve the use of any accessory building or yard space or activity outside the main building. Parking for a home occupation shall be limited to the two available parking spaces on the subject property where automobiles are customarily parked. (Ord. 1332 § 2. 1996; Ord. 1179 § 4 1992; (part) of Ord. passed 5/26/82: Ord. passed 1/21/81: prior code § 22-1-6(36))

19.04.300 Hotel.

"Hotel" means a building designed for or occupied by sixteen or more guests who are for compensation lodged, with or without meals. (Ord. 1337 § 2, 1996: prior code § 22-1-6(37))

19.04.305 Household pets.

"Household pets" means animals and/or fowl ordinarily permitted in the house and kept for company or pleasure, such as dogs, cats and canaries, including not more than two dogs or two cats over four months in age, and not more than a total of four animals. "Household pets" does not include inherently or potentially dangerous animals, fowl or reptiles. (Prior code § 22-1-6(38))

19.04.310 Intensity.

"Intensity" means the concentration of activity, such as a combination of the number of people, cars, visitors, customers, hours of operation, outdoor advertising, etc.; also, the size of buildings or structures, the most-intense being higher, longer and/or wider. (Prior code § 22-1-6 (part))

19.04.315 Junk.

A. "Junk" means any salvaged or scrap copper, brass, iron, steel, metal, rope, rags, batteries, paper, wood, trash, plastic, rubber, tires, waste or other articles or materials commonly designated as junk. Junk, except as provided in subsections (B) or (C), shall also mean any dismantled, wrecked or inoperable motor vehicles or parts thereof which are stored

or parked on property outside of an enclosed building and which remain in such condition for a period of time in excess of sixty days. An automobile, truck or bus shall be considered inoperable if it is not currently registered and licensed in this state or another state.

B. One truck with a capacity of one ton or less or automobile which is not currently licensed and registered in this state or another state but is otherwise operable may be stored on property for a period not to exceed two years if it is secured with the windows closed, the trunk and hood closed and the doors locked and is not damaged exposing jagged metal; or

C. One truck with a capacity of one ton or less or automobile which is inoperable may be stored in a side yard, except a side yard which faces on a street or a rear yard on property for a period not to exceed two years provided:

1. The automobile or truck is secured with the windows closed, the trunk and hood closed and the doors locked and is not damaged exposing jagged metal; and

2. The automobile or truck shall not be visible from any public street; and

3. The automobile or truck is entirely concealed by a covering which is maintained in good condition and which does not extend closer to the ground than the lowest point of the vehicle body.

D. All existing legal nonconforming motor vehicles as of the effective date of the ordinance codified in this section, or any amendment hereto, shall comply with the provisions of this section within one year from the date of the enactment of this section or any amendment thereto. (Ord. 1152 § 2, 1991: prior code § 22-1-6 (part))

19.04.320 Junkyard.

"Junkyard" means the use of any lot, portion of a lot, or tract of land for the sale, storage, keeping, disassembly or abandonment of junk or discarded or salvaged material, provided that this definition shall be deemed not to include such uses which are clearly accessory and incidental to any agricultural use permitted in the zone. (Prior code § 22-1-6(39))

19.04.325 Kennel.

"Kennel" means the keeping of three or more dogs, at least four months old. (Prior code § 22-1-6(40))

19.04.330 Lodginghouse.

"Lodginghouse" means a building where lodging only is provided for compensation of five or more, but not exceeding fifteen persons. (Prior code § 22-1-6(41))

19.04.335 Lot.

"Lot" means a parcel of land occupied by a building or group of buildings, together with such yards, open spaces, lot width and lot areas as are required by this title, having frontage upon a street or upon a right-of-way approved by the board of adjustment, or upon a right-of-way not less than twenty feet wide. Except for group dwellings and guest houses, not more than one dwelling structure shall occupy one lot. (Ord. 1011 § 2, 1987: prior code § 22-1-6(42))

19.04.340 Lot, corner.

"Corner lot" means a lot abutting on two intersecting or intercepting streets, where the interior angle of intersection or interception does not exceed one hundred thirty-five degrees. (Prior code § 22-1-6(43))

19.04.345 Lot, interior.

"Interior lot" means a lot other than a corner lot. (Prior code § 22-1-6(44))

19.04.350 Mobile home or manufactured home.

A. "Mobile home" or "manufactured home" means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use as a dwelling with or without a permanent foundation when connected to the required utilities.

B. The requirements of this title shall not be construed to prevent the storage of a mobile home in the rear yard of a dwelling structure. A mobile home so stored may be temporarily used for sleep-

ing purposes by members or guests of the family residing in the dwelling structure, but the mobile home shall not be connected to utilities or used for residential purposes unless approved by the planning commission as a temporary use incidental to construction work.

C. Except as provided herein and in Section 19.76.290, a mobile home shall not be used for residential or sleeping purposes unless the mobile home is located in an approved mobile home park or an approved mobile home subdivision. (Ord. 1068 § 2, 1989; Ord. 993 § 2, 1987: prior code § 22-1-6(45))

19.04.355 Mobile home park.

"Mobile home park" means any plot of ground upon which two or more mobile homes, occupied for dwelling or sleeping purposes, are located, regardless of whether or not a charge is made for such accommodation, pursuant to the mobile home park ordinance. (Prior code § 22-1-6(46))

19.04.360 Mobile store.

"Mobile store" means a portable structure, including vehicles, without a permanent foundation, for use on a temporary or seasonal basis, from which goods or merchandise are sold or where a service is provided which is utilized on the premises. Approval for each mobile store shall not exceed one hundred twenty days per calendar year at the same location or within two hundred fifty feet of a previously approved location. (Ord. 1042 § 2, 1988: prior code § 22-1-6 (part))

19.04.365 Natural waterways.

"Natural waterways" means those areas varying in width along streams, creeks, gullies, springs or washes which are natural drainage channels, as determined by the building inspector, and in which areas no building shall be constructed. (Prior code § 22-1-6(48))

19.04.370 Neighborhood storage.

"Neighborhood storage" means a building not served by sewer, water or gas utilities and used exclusively for storing personal property of an individual or family, retail business inventory items, and business records and accounts. ((Part) of Ord. passed 10/5/83: prior code § 22-1-6 (part))

19.04.375 New construction.

"New construction" means structures for which the "start of construction" commenced on or after the effective date of the ordinance codified in Chapter 19.74 of this title, on floodplain hazard regulations. (§ 1 (part) of Ord. passed 11/13/85: prior code § 22-1-6(119))

19.04.380 Nonconforming building or structure.

"Nonconforming building or structure" means a building or structure or portion thereof lawfully existing at the time the ordinance codified in this title became effective, which does not conform to all the height, area and yard regulations herein prescribed in the zone in which it is located. (Prior code § 22-1-6(49))

19.04.385 Nonconforming use.

"Nonconforming use" means a use which lawfully occupied a building or land at the time the ordinance codified in this title became effective and which does not conform with the use regulations of the zone in which it is located. (Prior code § 22-1-6(50))

19.04.390 Nursing home.

"Nursing home" means an establishment where persons are lodged and furnished with meals and nursing care. (Prior code § 22-1-6(51))

19.04.395 Organic disposal site.

"Organic disposal site" means a disposal site

where settled or precipitated solid matter produced by water and sewage treatment processes is disposed of in compliance with the city-county board of health requirements, using sanitary land-filling techniques, in a manner that does not create a nuisance or health hazard, that protects the environment, and will not cause a pollution source of water, air, etc. (1986 Recodification)

19.04.400 Package agency.

"Package agency" means a retail liquor location operated under a contractual agreement with the state department of alcoholic beverage control, by a person other than the state, who is authorized by the state of Utah alcoholic beverage control commission to sell package liquor for consumption off the premises of the agency. (Ord. 1008 § 2, 1987: prior code § 22-1-6(78))

19.04.405 Parking lot.

"Parking lot" means an open area, other than a street, used for parking of more than four automobiles and available for public use, whether free, for compensation, or as an accommodation for clients or customers. (Prior code § 22-1-6(52))

19.04.410 Parking space.

"Parking space" means space within a building, lot or parking lot for the parking or storage of one automobile. (Prior code § 22-1-6(53))

19.04.415 Permitted use.

"Permitted use" means a use of land for which no conditional use permit is required. (Prior code § 22-1-6(54))

19.04.420 Planned unit development.

"Planned unit development" means a complete development plan for an area pursuant to Chapter 19.78 of this title. (Prior code § 22-1-6(55))

19.04.425 Private educational institutions having an academic curriculum similar to that ordinarily given in public schools.

"Private educational institutions having an academic curriculum similar to that ordinarily given in public schools" means private training schools and other private schools which are instructional in nature, including laboratory and shop instruction with the use of demonstration vehicles, products or models incidental to such instruction, but not including the repair, maintenance or manufacture of vehicles, goods or merchandise, not providing direct services other than instruction to the general public. (Prior code § 22-1-6(56))

19.04.430 Private nonprofit locker club.

"Private nonprofit locker club" means a social club, recreational, athletic or kindred association incorporated under the provisions of the Utah Nonprofit Corporation and Cooperation Act, which maintains or intends to maintain premises upon which liquor is or will be stored, consumed or sold. (Prior code § 22-1-6(79))

19.04.435 Private nonprofit recreational grounds and facilities.

"Private nonprofit recreational grounds and facilities" means nonprofit recreational grounds and facilities operated by an association incorporated under the provisions of the Utah Nonprofit Corporation and Cooperation Act, or a corporated sole. (Prior code § 22-1-6(80))

19.04.437 Protected living arrangement.

"Protected living arrangement" means provision for food, shelter, appropriate sleeping accommodations, and supervision of activities of daily living for persons of any age who are unable to independently maintain these basic needs and functions. (Ord. 1118 § 3, 1990)

19.04.440 Public use.

"Public use" means a use operated exclusively by a public body, or quasi-public body, such use having the purpose of serving the public health, safety or general welfare, and including uses such as public schools, parks, playgrounds and other recreational facilities, administrative and service facilities, and public utilities. (Prior code § 22-1-6(57))

19.04.445 Quasi-public use.

"Quasi-public use" means a use operated by a private nonprofit educational, religious, recreational, charitable or philanthropic institution, such use having the purpose primarily of serving the general public, such as churches, private schools and universities, and similar uses. (Prior code § 22-1-6(58))

19.04.450 Recreation, commercial.

"Commercial recreation" means recreational facilities operated as a business and open to the general public for a fee, such as golf driving ranges and baseball batting ranges. (Prior code § 22-1-6(59))

19.04.451 Residential facility for elderly persons.

A. "Residential facility for elderly persons" means a single-family or multiple-family dwelling unit that is occupied twenty-four hours a day in a family-type arrangement by eight or fewer elderly persons sixty years old or older capable of living independently.

B. Such facility shall be owned by one of the residents or by an immediate family member of one of the residents or the title has been placed in trust for a resident.

C. Placement in such facility is on a voluntary basis and may not be a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional institution.

D. No person being treated for alcoholism or drug abuse may be placed in such a facility.

E. The structure shall be capable of use without the residential character being changed by exterior structural or landscaping alterations.

F. Each facility shall not be located within three-quarters mile of another residential facility for elderly persons or residential facility for handicapped persons.

G. This use is nontransferable and terminates if the structure is devoted to a use other than a residential facility for elderly persons or if the structure fails to comply with applicable health, safety, and building codes. (Ord. 1200 § 3, 1992)

19.04.452 Residential facility for persons with a disability.

"Residential facility for persons with a disability" means a residence:

A. In which more than one person with a disability resides; and

B. Is (1) licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities, Utah Code, Unannotated; or (2) licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, Utah Code, Unannotated. (Ord. 1452 § 2 (part), 1999)

19.04.453 Residential health care facility.

A. "Residential health care facility" means a facility providing assistance with activities of daily living and social care to two or more residents who require protected living arrangements.

B. Each bedroom in a residential health care facility shall contain the minimum square feet of floor space per resident as set forth in the Utah Administrative Code health facility licensure rules, or any successors, with a maximum of two residents per bedroom. (Ord. 1118 § 4, 1990)

19.04.455 Resort hotel.

"Resort hotel" means a building or group of buildings, other than a motel, boardinghouse or lodginghouse, containing individual guestrooms, suites of guestrooms, dwelling units, and which furnishes services customarily provided by hotels. (Prior code § 22-1-6(85))

19.04.457 Resource recycling collection point.

"Resource recycling collection point" means a portable structure, enclosed bin, trailer, or reverse vending machine where recyclable material (aluminum cans, glass, paper, etc.) is exchanged for money or deposited as a donation. Approval is not to exceed twelve months without reapproval. (Ord. 1042 § 5, 1988)

19.04.460 Restaurant.

"Restaurant" means a place of business where a variety of hot food is prepared and cooked and complete meals are served to the general public for consumption on the premises primarily in indoor dining accommodations. (Prior code § 22-1-6(81))

19.04.462 Restaurant liquor license.

"Restaurant liquor license" means a public restaurant authorized by the state alcoholic beverage control commission as a liquor outlet allowing the storage, sale and consumption of liquor and alcohol on the premises. (Ord. 1256 § 2, 1993: Ord. 1008 § 4, 1987)

19.04.465 Sanitary landfill.

"Sanitary landfill" means a land disposal site where solid waste is disposed of using sanitary landfilling techniques, including but not limited to an engineered method of disposing of solid waste on land in a manner that does not create a nuisance or health hazard and that protects the environment, by spreading the waste in thin layers, compacting it to the smallest practical volume, confining it to the smallest practical area, and covering it with soil by the end of each working day or as often as may be directed by the board of health. (1986 Recodification)

19.04.470 School.

"School" means an institution recognized as satisfying the requirements of public education and having an academic curriculum similar to that ordinarily given in public schools. Home occupations represented as schools shall not apply (dance, music, crafts, child nurseries, etc.). ((Part) of Ord. passed 8/7/80: prior code § 22-1-6 (part))

19.04.475 Shopping center.

"Shopping center" means a group of architecturally unified commercial establishments built on a site which is planned, developed, owned and managed as an operating unit. (Prior code § 22-1-6 (part))

19.04.480 Sportsman's kennel.

"Sportsman's kennel" means a kennel for the keeping of three to five dogs which has a valid permit from the department of animal services and is located on a lot of at least one acre. (Prior code § 22-1-6 (part))

19.04.485 Stable, private.

"Private stable" means a detached accessory building for the keeping of horses owned by the

occupants of the premises, and not kept for remuneration, hire or sale. (Prior code § 22-1-6(60))

19.04.490 Stable, public.

"Public stable" means a stable other than a private stable. (Prior code § 22-1-6(61))

19.04.495 Start of construction.

"Start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within one hundred eighty days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. "Permanent construction" does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not as part of the main structure. (Ord. 994 § 14, 1987)

19.04.500 State store.

"State store" means a facility for the sale of package liquor located on the premises owned or leased by the state and operated by state employees. This term shall not apply to restaurants, private clubs or package agencies. (Ord. 1008 § 3, 1987: prior code § 22-1-6(82))

19.04.505 Story.

"Story" means that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused underfloor space is more than six feet above grade for more than fifty percent of the total perimeter or is more than twelve feet above grade at any point, such usable or unused underfloor space shall be considered as a story. (Ord. 1091 § 6, 1989: prior code § 22-1-6(62))

19.04.507 Story, first.

"First story" means the lowest story in a building which qualifies as a story, except that a floor level in a building having only one floor level shall be classified as a first story, provided such floor level is not more than four feet below grade for more than fifty percent of the total perimeter, or not more than eight feet below grade at any point. (Ord. 1091 § 7, 1989)

19.04.510 Story, half.

"Half story" means a story with at least two of its opposite sides situated in a sloping roof, the floor area of which does not exceed two-thirds of the floor immediately below it. (Prior code § 22-1-6(63))

19.04.515 Street.

"Street" means a thoroughfare which has been dedicated or abandoned to the public and accepted by proper public authority, or a thoroughfare, not less than twenty-five feet wide, which has been made public by right of use and which affords the principal means of access to abutting property. (Prior code § 22-1-6(64))

19.04.520 Structure.

"Structure" means anything constructed or erected which requires location on the ground, or attached to something having a location on the ground. (Prior code § 22-1-6(65))

19.04.525 Structural alterations.

"Structural alterations" means any change in supporting members of a building or structure, such as bearing walls, columns, beams or girders. (Prior code § 22-1-6(66))

19.04.530 Studios.

"Studios" means a facility used for the instruction of specialized talents or skills. (Prior code § 22-1-6 (part))

19.04.535 Substantial improvement.

A. "Substantial improvement" means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure, either:

1. Before the improvement or repair is started; or

2. If the structure is damaged and is being restored, before the damage occurred.

B. For the purpose of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

C. The term does not, however, include either:

1. Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or

2. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places. (§ 1 (part) of Ord. passed 11/13/85: prior code § 22-1-6(118))

19.04.540 Tanning studio.

"Tanning studio" means any business which uses artificial lighting systems to produce a tan on an individual's body. This use specifically excludes spas, gymnasiums, athletic clubs, health clubs, and any exercise equipment. (1986 Recodification)

19.04.545 Tourist court.

"Tourist court" means any building or group of buildings containing sleeping rooms, with or without fixed cooking facilities, designed for temporary use by automobile tourists or transients, with garage attached or parking space conveniently located at each unit, including auto courts, motels or motor lodges. (Prior code § 22-1-6(67))

19.04.547 Short-term rental.

A. "Short-term rental" means any dwelling or portion thereof that is available for use or is used for accommodations or lodging of guests, paying a fee or other compensation for a period of less than thirty consecutive days.

B. A short-term rental shall not contain more than four bedrooms.

C. A short-term rental shall be maintained to the following minimum standards:

1. Structures shall be properly maintained, painted and kept in good repair, and grounds and landscaped areas shall be properly maintained and watered in order that the use in no way detracts from the general appearance of the neighborhood; and

2. Required parking areas and access to parking areas shall be maintained and available for use at all times. Parking for this use shall be contained on the site, and shall not be allowed on the public rights-of-way; and

3. Snow shall be removed from sidewalks and driveways within one hour after the snow has ceased falling, provided that in case of a storm between the hours of five p.m. in the afternoon and six a.m. in the morning, the sidewalk shall be cleaned before eight a.m. the morning following the storm.

D. Occupants of a short-term rental shall not create excessive noise that is incompatible with adjacent land uses.

E. A short-term rental use shall not have any signs on the premises that advertise the use.

F. The use of a dwelling as a short-term rental shall not change the appearance of the dwelling or property for residential purposes.

G. Outdoor pools, hot tubs or spas shall not be used between the hours of ten p.m. and eight a.m. (Ord. 1361 § 3, 1996: Ord. 1115 § 1, 1990)

19.04.550 Use, accessory.

"Accessory use" means a subordinate use customarily incidental to and located upon the same lot occupied by a main use. (Prior code § 22-1-6(68))

19.04.555 Width of lot.

"Width of lot" means the distance between the

Chapter 19.05

PLANNING COMMISSION

Sections:

19.05.010 Appointment—Term.

The planning commission shall consist of seven members appointed by the board of county commissioners. Members shall serve three-year terms and until their successors are appointed and qualified. Terms shall commence on March 1st of each year. In the event a term of a member shall expire without his/her having been reappointed or a successor having been appointed, the member shall continue to serve until a successor has been appointed and the term of the successor shall terminate on the same day as though he/she was appointed in a timely manner. Terms of at least two members, and not more than three, shall expire each year. The members of the planning commission shall be residents of the unincorporated area of the county. (Ord. 1220 § 1 (part), 1993)

19.05.020 Vacancy—Removal.

Any vacancy occurring on the planning commission by reason of death, resignation, removal or disqualification shall be filled by the board of county commissioners for the unexpired term of such member. The board of county commissioners may remove a member of the planning commission for cause after filing written charges against the member. The member shall be provided with a hearing on the charges if requested. (Ord. 1220 § 1 (part), 1993)

19.05.030 Organization—Procedures.

The planning commission shall elect a chairperson from its members who shall serve a one-year term. The planning commission may create and fill any other necessary offices it deems necessary and may adopt policies and procedures for the conduct of its meetings, the processing of applications, and for any other purpose the planning commission considers necessary for its proper function. (Ord. 1220 § 1 (part), 1993)

19.05.040 Powers and duties.

The planning commission shall:

A. Prepare and recommend a master plan and amendments to the master plan to the board of county commissioners;

B. Recommend zoning ordinances and maps and amendments to zoning ordinances and maps to the board of county commissioners;

C. Recommend subdivision ordinances and amendments to those ordinances to the board of county commissioners;

D. Recommend approval or denial of subdivision applications to the board of county commissioners;

E. Approve or deny conditional use permits;

F. Advise the board of county commissioners on matters that the board of county commissioners directs;

G. Provide other functions as specified in this chapter or as directed by the board of county commissioners. (Ord. 1220 § 1 (part), 1993)

19.05.050 Effect on present members.

Nothing in this chapter shall be construed to affect the eligibility or qualifications to serve of any of the present members of the planning commission whose terms have not expired or to affect their eligibility for reappointment. (Ord. 1220 § 1 (part), 1993)

19.05.060 Township planning and zoning boards.

Pursuant to the provisions and requirements of the Utah Township Act, 17-27a-101, et seq., Utah Code Annotated, and the township election ordinance, Section 2.74.010, et seq., Salt Lake County Code of Ordinances, townships shall be deemed established upon compliance with that Act and

ordinance and upon appointment and election of township board members. The county planning commission shall cease to exercise jurisdiction over all newly filed planning and zoning matters within areas establishing townships on the day when election results are canvassed indicating the township proposal passes. The township planning and zoning boards shall have jurisdiction regarding all pending and future planning and zoning matters and proceedings within the township area upon election and appointment of the full board. The following rules and procedures regarding township planning and zoning boards are established:

A. After a township is created, the duly elected and appointed township planning and zoning board shall act as the planning commission within the township boundaries and shall:

1. Prepare and recommend amendments to the general plan, as it pertains to the township, to the board of county commissioners;

2. Recommend to the board of county commissioners amendments to existing zoning ordinances and maps affecting areas within the township;

3. Administer provisions of the zoning ordinance where specifically provided for in the zoning ordinance adopted by the board of county commissioners;

4. Recommend to the board of county commissioners amendments to existing subdivision regulations affecting areas within the township;

5. Recommend to the board of county commissioners approval or denial of subdivision applications located within the township;

6. Approve or deny conditional use permits within the township;

7. Advise the board of county commissioners on matters that the board of county commissioners directs;

8. Provide other functions as specified in this chapter or as directed by the board of county commissioners.

B. The board of county commissioners shall adopt such policies and procedures as it deems necessary to provide for:

1. The location, scheduling, and conduct of township planning and zoning board meetings;

2. The processing of applications;

3. The provision of planning support staff;

4. The funding of necessary and reasonable expenses of township planning and zoning boards; and

5. For any other purposes considered necessary for the functioning of township planning and zoning boards.

C. The township board shall elect a chair and vice chair from among its members to sit for one year terms and may, by majority vote, adopt rules regarding its activities, which rules may not be in conflict with the Act or this chapter.

D. Unless otherwise provided by law, any vacancy occurring on a township planning and zoning board by reason of death, resignation, removal or disqualification shall be filled by the board of county commissioners for the unexpired term of such member. Vacancies for elected board members shall be filled for the unexpired term of the member replaced except that if over two years remain in the unexpired term, the replacement shall stand for re-election in the next even-numbered year. The board of county commissioners may remove for cause a member of a township planning and zoning board which the commission has appointed upon the filing of written charges against the member and after a hearing on the charges if requested by the member. (Ord. 1355 § 2, 1996: Ord. 1353 § 6, 1996)

Chapter 19.06

ZONES, MAPS, AND ZONE BOUNDARIES

Sections:

19.06.010 Zones established.

For the purpose of this title, the county to which this title applies is divided into classes of zones, as follows:

Forestry zone	F-1	
Forestry multifamily zone	FM-10	Eff. 8/19/75
Forestry multifamily zone	FM-20	Eff. 8/19/75
Forestry and recreation zone	FR-0.5	Eff. 8/19/75
Forestry and recreation zone	FR-1	Eff. 8/19/75
Forestry and recreation zone	FR-2.5	Eff. 10/21/87
Forestry and recreation zone	FR-5	Eff. 8/19/75
Forestry and recreation zone	FR-10	Eff. 8/19/75
Forestry and recreation zone	FR-20	Eff. 8/19/75
Forestry and recreation zone	FR-50	Eff. 8/19/75
Forestry and recreation zone	FR-100	Eff. 8/19/75
Residential zone	R-1-3	
Residential zone	R-1-4	Eff. 8/19/82
Residential zone	R-1-5	Eff. 8/19/82
Residential zone	R-1-6	
Residential zone	R-1-7	Eff. 1/28/77
Residential zone	R-1-8	
Residential zone	R-1-10	
Residential zone	R-1-10C	
Residential zone	R-1-15	Eff. 2/1/80
Residential zone	R-1-21	
Residential zone	R-1-43	
Residential zone	R-2-6.5	
Residential zone	R-2-8	
Residential zone	R-2-10	
Residential zone	R-2-10C	
Residential zone	R-4-8.5	
Residential zone	S-1-G	
Residential zone	R-M	
Residential zone	RMH	Eff. 5/15/80
Agricultural zone	A-1	
Agricultural zone	A-2	
Agricultural zone	A-5	Eff. 2/19/71
Agricultural zone	A-10	Eff. 2/19/71
Agricultural zone	A-20	Eff. 2/19/71
Foothill agricultural zone	FA-2.5	Eff. 7/15/82
Foothill agricultural zone	FA-5	Eff. 7/15/82
Foothill agricultural zone	FA-10	Eff. 7/15/82
Foothill agricultural zone	FA-20	Eff. 7/15/82
Mixed development zone	MD-1	Eff. 6/7/90
Mixed development zone	MD-3	Eff. 6/7/90
Office research park and development zone	O-R-D	
Commercial zone	C-1	
Commercial zone	C-V	Eff. 6/12/71
Commercial zone	C-2	
Commercial zone	C-3	
Manufacturing zone	M-1	
Manufacturing zone	M-2	
Airport overlay zone	AOZ	Eff. 4/30/76
Hillside protection zone	HPZ	Eff. 10/10/80

(Ord. 1192A § 2, 1992: Ord. 1114 § 2, 1990: Ord. 1013 § 2, 1987; (part) of Ord. passed 2/22/84; (part) of Ord. passed 2/1/84; (part) of Ord. passed 9/22/82; (part) of Ord. passed 8/25/82; (part) of Ord. passed 9/25/80; prior code § 22-8-1)

19.06.020 Zoning maps.

Each of the sections of the county which are amended or zoned by this title are shown on the maps on file with the planning commission, and such maps are made by this reference, as such, a part of this title as if fully described and detailed herein. (Ord. 1191 § 1, 1992; prior code § 22-8-2)

19.06.030 Filing of this title and zoning maps.

This title and the maps shall be filed in the custody of the county clerk, and may be examined by the public subject to any reasonable regulations established by the county clerk. (§ 3 of Ord. passed 2/22/84: prior code § 22-8-3)

19.06.040 Boundary location rules.

Where uncertainty exists as to the boundary of any zone, the following rules shall apply:

A. Wherever the zone boundary is indicated as being approximately upon the centerline of a street, alley or block, or along a property line, then, unless otherwise definitely indicated on the map, the centerline of the street, alley or block, or such property line, shall be construed to be the boundary of the zone;

B. Whenever such boundary line of such zone is indicated as being approximately at the line of any river, irrigation canal or other waterway or railroad right-of-way, or public park, or other public land, or any section line, then in such case the center of the stream, canal or waterway, or of the rail-

road right-of-way, or the boundary line of such public land or such section line shall be deemed to be the boundary of the zone;

C. Where the application of the above rules does not clarify the zone boundary location, the board of adjustment shall interpret the map. (§ 4 of Ord. passed 2/22/84: prior code § 22-8-4)

Chapter 19.08

F-1 FORESTRY ZONE

Sections:

19.08.010 Purpose of provisions.

The purpose of the F-1 zone is to permit limited residential development as well as utilization and preservation of the natural environment and resources of the canyon areas in Salt Lake County. (Prior code § 22-9-1)

19.08.020 Permitted uses.

Permitted uses in the F-1 zone include:

— Accessory buildings and uses customarily incidental to the below;

— Home day care/preschool, subject to Section 19.04.293;

— Residential facility for persons with a disability, provided that each such facility shall not be located within one-half mile of a similarly-licensed residential facility for persons with a disability;

— Single-family dwelling. (Ord. 1452 § 3, 1999; Ord. 1179 § 5 (part), 1992; § 1(part) of Ord. passed 2/1/84; prior code § 22-9-2)

19.08.030 Conditional uses.

Conditional uses in the F-1 zone include:

— Agriculture; the keeping of animals and fowl for family food production; grazing and pasturing of animals;

— Airport;

— Cemetery, mortuary, etc.;

— Day care/preschool center (subject to Section 19.76.260);

— Dude ranch;

— Farm devoted to raising (including slaughtering, dressing and marketing as incident to raising) beaver and nutria;

— Forest industry; production of forest products;

— Golf course;

— Home day care/preschool, subject to Section 19.04.293;

— Hydroelectric dam;

— Pigeons, subject to city-county health department regulations;

— Planned unit development;

— Private park and recreational grounds; private recreational camp or resort;

— Public and quasi-public use;

— Radio and/or television tower;

— Residential facility for elderly persons;

— Temporary buildings for uses incidental to construction work, which buildings must be removed upon completion or abandonment of the construction work. If such buildings are not removed within ninety days upon completion of construction and thirty days after notice, the building will be removed by the county at the expense of the owner;

— Underground record storage vaults;

— Water pumping plant and reservoir. (Ord. 1200 § 4 (part), 1992; (Part) of Ord. passed 12/15/82; prior code § 22-9-3)

19.08.040 Lot area.

The minimum area for any dwelling in the F-1 zone shall be not less than twenty thousand square feet. The minimum lot area for any conditional use shall be determined by the planning commission. In no case shall the minimum area for a conditional use be less than one acre. (Prior code § 22-9-4)

19.08.050 Lot width.

The minimum width for any dwelling lot in the F-1 zone shall be seventy-five feet. (Prior Code § 22-9-5)

19.08.060 Front yard.

In the F-1 zone, the minimum depth of the front yard for main buildings and for private garages which have a minimum side yard of eight feet shall

eighteen feet. Other main buildings shall have a minimum side yard of twenty feet, and the total width of the two yards shall be not less than forty feet. The minimum side yard for a private garage shall be eight feet, except that private garages and other accessory buildings located in the rear and at least six feet away from the main building shall have a minimum side yard of not less than one foot, provided that no private garage or other accessory building shall be located closer than ten feet to a dwelling on an adjacent lot. On corner lots, the side yard which faces on a street, for both main and accessory buildings, shall be not less than twenty feet, or the average of existing buildings where fifty percent or more of the frontage is developed, but in no case less than fifteen feet, or be required to be more than twenty feet. Dwelling structures over thirty-five feet in height shall have one foot of additional side yard on each side of the building for each two feet such structure exceeds thirty-five feet in height. (Prior code § 22-22-6)

19.44.080 Rear yard.

In R-M zones, the minimum depth of the rear yard for any building shall be thirty feet, and for accessory buildings one foot; provided that, on corner lots which rear upon the side yard of another lot, accessory buildings shall be located not closer than ten feet to such side yard. (Prior code § 22-22-8)

19.44.090 Coverage restrictions.

No building or group of buildings in an R-M zone, with their accessory buildings, shall cover more than sixty percent of the area of the lot. (Prior code § 22-22-10)

19.44.100 Building height.

No building or structure in an R-M zone shall contain more than six stories or exceed seventy-five feet in height, and no dwelling structure shall contain less than one story. (Ord. 1102 § 20, 1990: prior code § 22-22-9)

Chapter 19.45

O-R-D OFFICE RESEARCH PARK AND DEVELOPMENT ZONE

Sections:

19.45.010 Purpose of provisions.

The purpose of the O-R-D zone is to provide an aesthetically attractive environment for offices, research facilities, environmentally appropriate fabrication and assembly uses and accessory uses. This zone is intended to insure compatibility of new development with the surrounding land uses through standards that provide an open campus-like setting with attractive buildings, park-like grounds, and other appropriate amenities supporting employee activity. Specific measures to mitigate impacts of development will be required at the time of design and site plan approval. (Ord. 1192 § 1 (part), 1992)

19.45.020 Design and site plan approval.

Design and site plan approval for all development is a conditional use pursuant to the requirements of Sections 19.84.020 through 19.84.130 of this title. The conditional use review shall include but not be limited to architectural design and theme, building materials, lighting, signage, landscaping, parking, vehicular, bike and pedestrian access, accessory structures, helicopter pads, nuisance factors and natural and manmade hazards. (Ord. 1192 § 1 (part), 1992)

19.45.030 Permitted uses.

Permitted uses include:

— Accessory uses and buildings customarily incidental to a permitted or conditional use, excluding:

A. Processing and compounding of raw materials or food products, and

B. Samples of products for display or in conjunction with sales which are not assembled or manufactured on the premises, and

C. Microwave antennae (see conditional uses), and

D. Retail commercial accessory uses (see conditional uses);

— Agriculture;

— Bank or financial institution;

— Copy service;

— Day care/preschool center;

— Facilities for the furnishing of meals and sale of refreshments and personal convenience items to the employees or visitors of such establishments, and located within the building served;

— Medical, optical and dental laboratories;

— Office, business or professional;

— Office supply;

— Optometrist and/or oculist located within an office building;

— Pharmacy located within an office building;

— Temporary buildings for uses incidental to construction work, which buildings shall be removed upon completion or abandonment of the construction work. If such buildings are not removed within ninety days upon completion of construction and thirty days after notice, the buildings will be removed by the county at the expense of the owner. (Ord. 1192 § 1 (part), 1992)

19.45.040 Conditional uses.

Conditional uses include:

— Bed and breakfast inn, which may include a restaurant and conference meeting rooms;

— Class B beer outlet;

— Fabrication, assembly and treatment of articles of merchandise from previously prepared precious or semiprecious metals or stones;

— Fabrication, assembly and maintenance of business machines and/or electronic instruments, excluding processing and compounding of raw materials;

— Hotel;

— Laboratory (other than those listed as a permitted use) which may include scientific research, investigation, testing or experimentation including prototype product development or incidental pilot plants;

— Living quarters for caretaker, guard or night watchman;

— Microwave antennae;

— Medical supplies assembly;

— Private educational institution;

— Private nonprofit locker club;

— Private school related to research and development;

— Public and quasi-public uses;

— Radio and/or television station;

— Restaurant, excluding drive-through or take-out service;

— Restaurant liquor license;

— Retail commercial uses accessory to and/or supporting a permitted use or conditional use;

— Shared parking;

— Other uses of similar intensity to the above as determined by the planning commission. (Ord. 1416 § 2 (part), 1998; Ord. 1356 § 2, 1996; Ord. 1192 § 1 (part), 1992)

19.45.050 Hours of operation.

A. Retail commercial uses shall only be open for business between six a.m. and eleven p.m. unless the planning commission approves additional hours.

B. Commercial garbage and rubbish collection shall only occur between seven a.m. and six p.m. if there is a residential zone or residential use within three hundred feet of the collection point. (Ord. 1192 § 1 (part), 1992)

19.45.060 Outside storage not permitted.

Outside storage of any stock, motor vehicles (other than parking for employee and visitor vehicles), or other property is not permitted. (Ord. 1192 § 1 (part), 1992)

19.45.070 Project area.

The project area shall be a minimum of ten acres, but this requirement does not preclude separate ownership of buildings. (Ord. 1192 § 1 (part), 1992)

19.45.080 Yard requirements.

The minimum yard requirements for all main and accessory buildings are as follows:

A. Front yard: fifty feet;

B. Side yard:

1. Fifty feet if adjacent to a residential or agricultural zone, or facing on a street. The side yard shall be increased at least one foot for each additional foot of building height above thirty feet;

2. Thirty feet if adjacent to other zones.

C. Rear yard:

1. Fifty feet if adjacent to a residential or agricultural zone, or facing on a street. The rear yard shall be increased at least one foot for each additional foot of building height above thirty feet;

2. Thirty feet if adjacent to other zones. (Ord. 1192 § 1 (part), 1992)

19.45.090 Building height.

The maximum height of a building or structure shall be two stories. The planning commission may allow additional height to a maximum of six stories where it is determined that additional height will not adversely impact the surrounding land uses. The planning commission may reduce the height allowed at locations where a reduction in height is necessary to minimize the impact on surrounding land uses. (Ord. 1192 § 1 (part), 1992)

19.45.100 Coverage restrictions.

A building or group of buildings, with their accessory buildings, shall not cover more than twenty-five percent of the project area. (Ord. 1192 § 1 (part), 1992)

19.45.110 Perimeter wall.

A. All uses shall have a decorative tinted concrete or masonry wall along all rear and side yards not fronting on a public street, which abut a residentially or agriculturally zoned property or a residential use. This requirement may be waived by the planning commission upon a determination that the wall is not necessary to buffer the adjacent use. Such walls shall not be located in the required setback from a public street.

B. All perimeter walls shall be a minimum of six feet high unless the planning commission requires a higher wall as part of the conditional use approval.

C. The planning commission may allow appropriate access to trails, creeks, or other open space amenities. (Ord. 1192 § 1 (part), 1992)

19.45.120 Landscaping.

A. All landscaped areas shall be planted with live plant material and include a permanent automatic irrigation system, except for natural areas approved by the planning commission for preservation. The owner, tenant and any agent shall be jointly and severally responsible for the maintenance of all landscaping in good condition and free from refuse and debris so as to present a healthy, neat and orderly appearance.

B. A minimum of thirty percent of the total site shall be landscaped. The planning commission may approve preservation of natural areas or trails as part of the thirty percent.

C. The required front yard setback and the required side yard setback which faces on a street on corner lots shall be landscaped with live plant materials including shrubs and trees except for necessary vehicular driveways and pedestrian walkways. Deciduous trees shall have a minimum caliper of two inches. A minimum of forty percent of the trees shall be conifer trees having a minimum height of six feet.

D. Landscaping in parking areas shall meet the following minimum requirements:

Size of parking area	Percent landscaped
Less than 15,000 square feet	5
15,000 to 29,999 square feet	7.5
30,000 square feet and larger	10

One tree shall be planted for every ten parking stalls. Deciduous trees shall have a minimum caliper of two inches. A minimum of forty percent of the trees shall be conifer trees having a minimum height of six feet. The distribution of the trees shall maximize shading during summer months. All landscaped areas shall be separated from the parking surface by at least a six-inch-high curb.

E. A minimum landscaped area fifteen feet wide is required along the side and rear property lines. Where a side yard or rear yard is adjacent to a residential or agricultural zone or residential or agricultural use, the entire side yard setback and rear yard setback shall be landscaped.

F. Berming of the landscaped areas is encouraged. (Ord. 1192 § 1 (part), 1992)

19.45.130 Lighting.

A. Uniformity of lighting is desirable to achieve an overall objective of continuity, and to avoid objectionable glare.

B. The maximum height of luminaries shall be eighteen feet unless the planning commission requires a lower height as part of the conditional use approval. The light shall be low intensity, shielded from uses on adjoining lots, and directed away from adjacent property in a residential or agricultural zone or an adjacent residential or agricultural use.

C. All parking luminaries, except those required for security, shall be extinguished one hour after the end of business hours. The exception for security lighting applies to a maximum of twenty-five percent of the total luminaries used, unless the planning commission approves a higher percentage.

D. Pedestrian walkways to mass transit facilities shall be lighted. (Ord. 1192 § 1 (part), 1992)

19.45.140 Nuisance factors and hazards.

Operations shall not be conducted which emit offensive or objectionable noise, vibration, smoke, odors, dust or gases, air pollution, water pollution or generates heavy truck traffic. Precautions shall be taken in all operations against radiation, radioactivity, fire and explosion hazards.

A. Activities conducted on the premises shall comply with all local, state and federal laws and regulations and permits.

B. The noise level emanating from any use or operation shall not exceed the limits in the Salt Lake City-County health department health regulation number twenty-one, or its successor, regarding noise control. The noise level shall not in any case exceed five decibels above the ambient level of the area measured at the property line. For the purposes of compliance with health regulation number twenty-one all properties located within an office research park and development zone shall be considered residential.

C. A use shall be not permitted which creates objectionable odor in such quantity as to be readily detectable at the boundaries of the site. (Ord. 1192 § 1 (part), 1992)

19.45.150 Screening.

A. All trash or refuse receptacle areas shall be completely screened from surrounding properties by a masonry wall that is a minimum of six feet high or shall be enclosed within a building. Any trash or refuse receptacle area shall be a minimum of fifty feet from any residential or agricultural zone boundary or property containing a residential or agricultural use.

B. All ground mounted mechanical equipment including, but not limited to, heating and air conditioning units shall be completely screened from surrounding properties by a masonry wall or shall be enclosed within a building.

C. The use of roof appurtenances is discouraged. If roof appurtenances including, but not limited to, air conditioning units and mechanical equipment are used, they shall be placed within an enclosure at least as high as the roof appurtenances that reflects the architectural design scheme of the project and complies with the requirements for penthouses and roof structures of the Uniform Building Code, as adopted by the state. Such enclosures require planning commission approval, and shall minimize visibility from on-site parking areas, adjacent public streets, and adjacent residentially or agriculturally zoned property. The planning commission may require that the enclosure have a roof when it determines that a roofed enclosure is necessary to meet the objectives of this section.

D. All utility connections shall be compatible with the architectural elements of the site and not be exposed except where necessary. Pad-mounted transformers and/or meter box locations shall be included in the site plan with an appropriate screening treatment. Power lines and other utility cables shall be installed underground where possible.

E. Loading areas and docks shall be screened by landscaping and/or visual barriers from adjacent properties and public streets. (Ord. 1230 § 2, 1993; Ord. 1192 § 1 (part), 1992)

19.45.160 Access and parking.

A. The number of access points along public streets shall be minimized by sharing and linking parking areas with adjacent properties. Reciprocal ingress and egress, circulation and parking agreements shall be required to facilitate the ease of vehicular movement between adjoining properties. On corner sites access points shall be located as far from the corner as reasonably possible and in no case less than sixty feet from the point of intersection of the property lines. Vehicular circulation shall be designed to preclude the intrusion of traffic directly into residential or agricultural areas.

B. Parking shall be located peripherally around the buildings rather than concentrated between the building and the public streets to allow the building to be closer to the mass transit facilities.

C. Parking spaces for vanpool/carpool vehicles shall be provided and have a priority location near building entrances to encourage this form of mass transit.

D. Parking shall not be located in the required front yard setback or the required side yard setback which faces on a street. (Ord. 1192 § 1 (part), 1992)

19.45.170 Pedestrian walkways.

A. Pedestrian walkways, a minimum of five feet wide, shall be provided to accommodate pedestrian movement between activity centers within the site,

to adjacent uses and from building entrances directly to mass transit facilities.

B. Public easements for walkways, jogging paths and similar uses may be required. (Ord. 1192 § 1 (part), 1992)

19.45.180 Design considerations.

In order to meet the purposes of the O-R-D zone, the planning commission shall consider the following prior to approval of any plan:

A. The development shall provide on-site amenities and appropriate buffering to adjacent properties and uses.

B. The scale of the development shall be in character with the surrounding land uses.

C. Safe access shall be provided within the site and to public streets. (Ord. 1192 § 1 (part), 1992)

19.45.190 Consistency with master plan.

Development shall be consistent with the Salt Lake County Master Plan. (Ord. 1192 § 1 (part), 1992)

Chapter 19.84

CONDITIONAL USES

Sections:

19.84.010 Purpose.

The purpose of this chapter is to allow the proper integration into the county of uses which may be suitable only in certain locations in the county or zoning district, or only if such uses are designed or laid out on the site in a particular manner. (Prior code § 22-31-1)

19.84.020 Conditional use permit required when.

A conditional use permit shall be required for all uses listed as conditional uses in the district regulations or elsewhere in this title. (Ord. 1279 § 5, 1994: Ord. 947 § 2, 1986: prior code § 22-31-2 (part))

19.84.030 Application requirements—Fee.

A. Application for a conditional use permit shall be made by the property owner or certified agent thereof to the planning commission.

B. Accompanying Documents. Detailed site plans drawn to scale and other drawings necessary to assist the planning commission in arriving at an appropriate decision.

C. Fee. The fee for any conditional use permit shall be as provided for in Section 3.52.040 of this code. (Prior code § 22-31-2(1)—(3))

19.84.040 Public hearing.

No public hearing need be held; however, a hearing may be held when the planning commission shall deem such a hearing to be necessary in the public interest.

A. The development services division director may delegate to the planning director the holding of the hearing.

B. The development services division director shall submit to the planning commission a record of the hearing, together with a report of findings and recommendations relative thereto, for the consideration of the planning commission.

C. Such hearing, if deemed necessary, shall be held not more than thirty days from the date of application. The particular time and place shall be established by the development services division director.

D. The development services division director shall publish a notice of hearing in a newspaper of general circulation in the county not less than ten days prior to the date of the hearing. Failure of property owners to receive notice of the hearing shall in no way affect the validity of action taken. (Ord. 982 § 20, 1986: prior code § 22-31-2(4))

19.84.050 Determination of commission.

The planning commission may permit a conditional use to be located within any district in which the particular conditional use is permitted by the use

regulations of this title. In authorizing any conditional use the planning commission shall impose such requirements and conditions as required by law and any additional conditions as may be necessary for the protection of adjacent properties and the public welfare. Such conditions of approval may include but shall not be limited to limitations or requirements as to street and/or trail dedication, the height, size, location and design of structures, landscaping, density, ingress-egress, fencing, parking or lighting. Height, density and size requirements for structures in each zone are maximums and may be reduced or modified as conditions to the approval of any conditional use application. (Ord. 1248 § 2, 1993: Ord. of 5/29/85; prior code § 22-31-2(5)(part))

19.84.060 Delegation of approval authority.

The planning commission may delegate to the development services division director the authority to approve, modify or deny all or part of the conditional uses set forth in this title. (Ord. 982 § 21, 1986: prior code § 22-31-2(5)(part))

19.84.070 Policies established.

The planning commission shall establish policies regarding landscaping, fencing, lighting, ingress-egress, height of buildings, etc., to guide the decision of the development services division director to ensure consistency in the issuance of conditional use permits. (Ord. 982 § 22, 1986: prior code § 22-31-2(5)(part))

19.84.075 Graffiti preventative materials or design.

A. Whenever the planning commission determines that there is a reasonable likelihood that graffiti will be placed on the surfaces of proposed improvements it shall require, as part of the conditional use approval, that the applicant apply an anti-graffiti material, approved by the development services division, to each of the surfaces to be constructed. The anti-graffiti material shall be used on surfaces from ground level to a height of nine feet. The planning commission may approve dense planting or appropriate design measures in place of anti-graffiti materials.

B. Whenever the planning commission becomes aware of graffiti having been placed on any surfaces constructed as part of development approved as a conditional use, it may require that the applicant or his/her successor in interest apply an anti-graffiti material to such surfaces where no such material was previously required. (Ord. 1290 § 4, 1995)

19.84.080 Review by planning commission.

The development services division director is authorized to bring any conditional use permit application before the planning commission if, in his opinion, the general public interest will be better served by review of the planning commission. (Ord. 982 § 23, 1986: prior code § 22-31-2(5)(part))

19.84.090 Conditions for approval.

The planning commission shall not authorize a conditional use permit unless the evidence presented is such as to establish:

A. That the proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general well-being of the neighborhood and the community; and

B. That such use will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity; and

C. That the proposed use will comply with the regulations and conditions specified in this title for such use; and

D. That the proposed use will conform to the intent of the county master plan. (Prior code § 22-31-2(5)(part))

19.84.095 Preliminary and final approval of conditional use applications.

A. Unless otherwise designated, a decision approving a conditional use application shall be a preliminary approval of the application.

B. Except as specified in subsection C of this section, the development services director is authorized to grant final approval of conditional use applications after all of the conditions and requirements of the preliminary approval which are necessary for the final approval have been met. Final approval of a conditional use application shall be in the form of a letter to the applicant which, together with the approved site plan if required, shall constitute the conditional use permit.

C. The planning commission may require as a condition of preliminary approval that a conditional use application be brought before the planning commission for consideration of final approval. (Ord. 1071 § 3, 1989)

19.84.100 Appeal of planning director decision.

Any person shall have the right to appeal the decision of the development services director to the planning commission by filing a letter with the planning commission within ten days of the development services director's decision, stating the reason for the appeal and requesting a hearing before the planning commission at the earliest regular

meeting of the commission. (Ord. 979 § 3, 1986: prior code § 22-31-2(5)(part))

19.84.110 Appeal of planning commission decision.

A. Any person shall have the right to appeal to the board of county commissioners any decision rendered by the planning commission by filing in writing, and in triplicate, stating the reasons for the appeal with the board of county commissioners within ten days following the date upon which the decision is made by the planning commission. After receiving the appeal the county commission may reaffirm the planning commission decision, remand the matter to the planning commission for further consideration, or set a date for a public hearing.

B. Notification of Planning Commission. The board of county commissioners shall notify the planning commission of the date of the review, in writing, at least seven days preceding the date set for hearing so that the planning commission may prepare the record for the hearing.

C. Determination by Board of County Commissioners. The board of county commissioners after proper review of the decision of the planning commission may affirm, reverse, alter or remand for further review and consideration any action taken by the planning commission. (Ord. 1004 § 2, 1987: prior code § 22-31-2(6))

19.84.120 Inspection.

Following the issuance of a conditional use permit by the planning commission the director of building inspection shall approve an application for a building permit pursuant to Chapter 19.94 of this title and shall ensure that development is undertaken and completed in compliance with the permits. (Prior code § 22-31-2(7))

19.84.130 Time limit.

Approval of the conditional use application by the planning commission or the development services director shall expire twenty-four months after the date of the approval decision (see Section 19.02.070) unless the applicant has obtained the conditional use permit and a building permit, where required, for the use within the twenty-four-month period. The date of the approval decision shall be the date of the preliminary approval decision where the application approval process includes both a preliminary and final approval. A twelve-month extension can be obtained subject to paying an extension fee equal to 1.0 times the original filing fee. (Ord. 1037 § 2, 1988: Ord. 963 § 1, 1986: prior code § 22-31-2(8))

19.84.140 Sale of alcoholic beverages.

A. The planning commission shall authorize a conditional use permit to sell alcoholic beverages except Class A beer outlets and Class B beer outlets where it is determined by the planning commission:

1. That the use is not in the immediate proximity of any school, church, library, public playground, or park;

2. That the proposed use at a particular location is necessary and desirable to provide the service or facility which will contribute to the general well-being of the neighborhood and the community; and

3. That such use will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity; and

4. That the proposed use will comply with regulations and conditions specified in this title for such use; and

5. That the proposed use will conform to the intent of the county master plan.

B. All conditional use permits for uses dispensing alcoholic beverages to be consumed on the premises are subject to an annual review, and all applications for a conditional use permit for consumption of liquor or beer on the premises must be accompanied by a payment of fees as provided in Section 3.52.040. The fees are considered reasonable because of the costs of investigation and studies necessary for the administration hereof.

C. The granting of any permit by the planning commission to dispense alcoholic beverages is sub-

ject to review by the county commission. The denial of any permit by the planning commission to dispense alcoholic beverages is subject to review by the district courts. All appeals of planning commission decisions to the board of county commissioners or the district courts must be filed with the appropriate body within thirty days from the date of the planning commission decision. (Ord. 804, 1982: prior code § 22-31-4)

19.84.150 Revocation of conditional use permits.

A conditional use permit may be revoked by the planning commission upon failure in compliance with the conditions precedent to the original approval of the permit or for any violation of this title occurring on the site for which the permit was approved. Prior to taking action concerning revocation of a conditional use permit, a hearing shall be held by the planning commission. Notice of the hearing and the grounds for consideration of revocation shall be mailed to the permittee at least ten days prior to the hearing. (Ord. 1279 § 2, 1994)

19.84.160 Hearing officer.

The planning commission may appoint, with the concurrence of the board of county commissioners, a hearing officer or officers to make recommendations to the planning commission as to whether cause exists for the planning commission to consider revoking any conditional use permit. Prior to making any recommendation to the planning commission, an evidentiary hearing shall be held by the hearing officer to determine whether the permittee has failed to comply with conditions precedent to the original approval of the permit or has otherwise violated any provision of the zoning ordinance occurring on the site for which the permit was approved. The hearing officer shall notify the planning commission if any violations have been corrected by the permittee within any time period suggested by the hearing examiner. (Ord. 1279 § 3, 1994)

Chapter 19.92

BOARD OF ADJUSTMENT

Sections:

19.92.010 Membership—Term.

The board of adjustment shall consist of five members and three alternates, all of whom shall be appointed by the board of county commissioners. Terms of each of the members and the alternates shall expire on November 1st of the last year of the term for which they were appointed. On or before November 1st of each year one member shall be appointed for a five-year period to take the place of the member whose term has expired, which term shall commence November 1st. Any vacancy occurring on the board by reason of death, resignation, removal or disqualification shall be filled by the board of county commissioners for the unexpired term of such member. In the event a term of a member or alternate shall expire without his having been reappointed or a successor having been appointed, the member or alternate shall continue to serve until a successor has been appointed and the term of the successor shall terminate on the same day as though he was appointed in a timely manner. The members of the board shall be residents of the unincorporated area of the county and at least one and not more than two members or alternates shall be members of the county planning commission. (Ord. 1221 § 1 (part), 1993)

19.92.020 Organization—Procedures.

A. The board of adjustment shall:

1. Organize and elect a chairperson; and
2. Adopt rules governing its procedures.

B. The board of adjustment shall meet at the call of the chairperson and at any other times that the board of adjustment determines.

C. The chairperson, or in the absence of the chairperson, the acting chairperson, may administer oaths and compel the attendance of witnesses.

D. 1. All meetings of the board of adjustment shall comply with the requirements of Chapter 4, Title 52, Utah Code, Open and Public Meetings.

2. The board of adjustment shall:

a. Keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact; and

b. Keep records of its examinations and other official actions.

3. The board of adjustment shall file its records in the office of the development services division.

4. All records in the office of the board of adjustment are public records.

E. Not more than two alternate members may sit at any meeting of the board of adjustment at one time.

F. Decisions of the board of adjustment become effective at the meeting in which the decision is made, unless a different time is designated in the board's rules or at the time the decision is made. (Ord. 1221 § 1 (part), 1993)

19.92.030 Powers and duties.

The board of adjustment shall:

A. Hear and decide appeals from zoning decisions applying the zoning ordinance as provided in Section 19.92.050;

B. Hear and decide the special exceptions to the terms of the zoning ordinance set forth in Section 19.92.060;

C. Hear and decide variances from the terms of the zoning ordinance; and

D. Determine the existence, expansion or modification of nonconforming uses. (Ord. 1221 § 1 (part), 1993)

19.92.040 Variances.

A. Any person or entity desiring a waiver or

modification of the requirements of the zoning ordinance as applied to a parcel of property that he/she owns, leases, or in which he/she holds some other beneficial interest may apply to the board of adjustment for a variance from the terms of the zoning ordinance.

B. 1. The board of adjustment may grant a variance only if:

a. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance;

b. There are special circumstances attached to the property that do not generally apply to other properties in the same district;

c. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;

d. The variance will not substantially affect the general plan and will not be contrary to the public interest; and

e. The spirit of the zoning ordinance is observed and substantial justice done.

2. a. In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under subsection (B)(1), the board of adjustment may not find an unreasonable hardship unless the alleged hardship:

i. Is located on or associated with the property for which the variance is sought; and

ii. Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

b. In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under subsection (B)(l), the board of adjustment may not find an unreasonable hardship if the hardship is self-imposed or economic.

3. In determining whether or not there are special circumstances attached to the property under subsection CB)(1) , the board of adjustment may find that special circumstances exist only if the special circumstances:

a. Relate to the hardship complained of; and

b. Deprive the property of privileges granted to other properties in the same district.

C. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

D. Variances run with the land.

E. The board of adjustment and any other body may not grant use variances.

F. In granting a variance, the board of adjustment may impose additional requirements on the applicant that will:

1. Mitigate any harmful effects of the variance; or

2. Serve the purpose of the standard or requirement that is waived or modified. (Ord. 1221 § 1 (part), 1993)

19.92.050 Appeals.

A. 1. The applicant or any other person or entity adversely affected by a zoning decision administering or interpreting a zoning ordinance may appeal that decision applying the zoning ordinance by alleging that there is error in any order, requirement, decision or determination made by an official in the administration or interpretation of the zoning ordinance.

2. Any officer, department, board or bureau of a county affected by the grant or refusal of a building permit or by any other decisions of the administrative officer in the administration or interpretation of the zoning ordinance may appeal any decision to the board of adjustment.

B. The person or entity making the appeal has the burden of proving that an error has been made.

C. 1. Only zoning decisions applying the ordinance may be appealed to the board of adjustment.

2. A person may not appeal, and the board of adjustment may not consider, any zoning ordinance amendments or conditional use decisions.

D. Appeals may not be used to waive or modify the terms or requirements of the zoning ordinance.

E. An appeal to the board of adjustment must be filed at the development services division of Salt Lake County within sixty days after the order, requirement decision or determination administering or interpreting the zoning ordinance is made in

writing. The appeal shall set forth with specificity the reasons or grounds for the appeal.

F. Appeals shall follow the procedures set forth in the rules of the board of adjustment. (Ord. 1221 § 1 (part), 1993)

19.92.060 Special exceptions.

The board of adjustment may approve any of the following special exceptions to the zoning ordinance where it determines the exception is consistent with the purposes of the zoning ordinance and will not be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity:

A. Where a zone boundary line divides a lot in single ownership at the time of the passage of the ordinance codified in this title, the board may permit a use authorized on either portion of such lot to extend not more than fifty feet into the other portion of the lot.

B. The board may permit the building of a dwelling upon a lot which does not have frontage on a street.

C. The board may permit the enlargement of or addition to a nonconforming building or structure or a building or structure occupied by a nonconforming use.

D. The board may permit the relocation on a lot of a nonconforming building or structure or a building or structure occupied by a nonconforming use; or the board may permit the reconstruction on a lot of a nonconforming building or a building occupied by a nonconforming use.

E. Where a parcel of land is at least one and one-half times as wide and one and one-half times as large in area as required for a lot in the zone, or one and one-quarter times as wide and one and one-quarter times as large in area as required for two lots in the zone, the board may permit the division of this parcel into two or three lots respectively. Any such creation of an additional lot or lots by the board shall be subject to compliance with subdivision requirements where applicable.

F. The board may permit a temporary building for commerce or industry in a residential zone, which building is incidental to the residential development, such permit to be issued for a period of not more than one year. (Ord. 1295 § 2, 1995; Ord. 1221 § 1 (part), 1993)

19.92.070 Voting.

The concurring vote of at least three members of the board shall be necessary to reverse any order, requirement or determination of any such administrative official, or to decide in favor of the applicant on any matter on which it is required to pass or to effect any such variation or special exception to this title. (Ord. 1441 § 2, 1999: Ord. 1221 § 1 (part), 1993)

19.92.080 Effect on present members.

Nothing in this chapter shall be construed to affect the eligibility or qualifications to serve of any of the present members of the board of adjustment whose terms have not expired, nor shall anything in this chapter be interpreted to affect the eligibility for reappointment of any of the present alternates. (Ord. 1221 § 1 (part), 1993)

Chapter 19.93

PROCEDURES FOR ANALYZING TAKINGS CLAIMS

Sections:

19.93.010 Purpose.

The purpose of this chapter is to establish procedures for:

A. Obtaining and analyzing information regarding a claim that the application or enforcement of Salt Lake County zoning ordinances and/or land use regulations to private property within the unincorporated areas of the county constitutes an unconstitutional taking of private property without just compensation; and

B. Determining whether it might be appropriate to grant administrative relief to the claimant in the event it is determined that such application or enforcement constitutes an unconstitutional taking. (Ord. 1455 § 2 (part), 1999)

19.93.020 Findings.

The governing body makes the following findings:

A. To further the public interest in lawful and responsible land development, and promote the health, welfare, and safety of its residents, the county has enacted zoning and other land development regulations applicable to properties within unincorporated areas of the county, including new and revised regulations applicable to properties in the county's canyons and foothills; and

B. In the event an owner of private property within the unincorporated area of the county claims that the application or enforcement of county zoning ordinances or other land use regulation constitutes an unconstitutional taking of its private property, it is in the best interests of the county to have established procedures for obtaining relevant information for analyzing such claim and determining whether it might be appropriate to grant certain relief to the claimant, rather than conducting such analysis in a more confrontational, expensive, and time-consuming litigation context. (Ord. 1455 § 2 (part), 1999)

19.93.030 Taking relief procedures—Petition and submittal requirements.

A. Takings Relief Petition. Any applicant, after a final decision on its application is rendered by the development services director, planning commission, board of adjustment, or governing body, may file a takings relief petition with the development services director seeking relief from the final decision on the grounds that it constitutes an unconstitutional taking of the applicant's private property.

B. Affected Property Interest. The takings relief petition must provide information sufficient for the district attorney to determine that the petitioner possesses a protectable interest in property under Article I, Section 22 of the Constitution of Utah or the Fifth Amendment to the United States Constitution. In the event the petition does not provide information sufficient for the district attorney to determine that the petitioner possesses a protectable interest in property under Article I, Section 22 of the Constitution of Utah or the Fifth Amendment to the United States Constitution, the petition shall be returned to the petitioner.

C. Time for Filing Petition. No later than thirty calendar days from the final decision by the development services director, planning commission, board of adjustment, governing body, or other county review authority on any site plan or other type of zoning application the applicant shall file a takings relief petition with the development services director.

D. Information to Be Submitted with Takings Relief Petition.

1. The takings relief petition must be submitted on a form prepared by the development services